

UT SYSTEMWIDE TITLE IX ANNUAL TRAINING

A Practical Approach to Navigating Beyond Compliance

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August 2025

University of Texas, El Paso

GRAND RIVER | SOLUTIONS

MEET YOUR FACILITATORS



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ABOUT US

Vision

We exist to create safe and equitable work and educational environments.

Mission

To bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity

REMINDER

State laws and interpretations can differ.

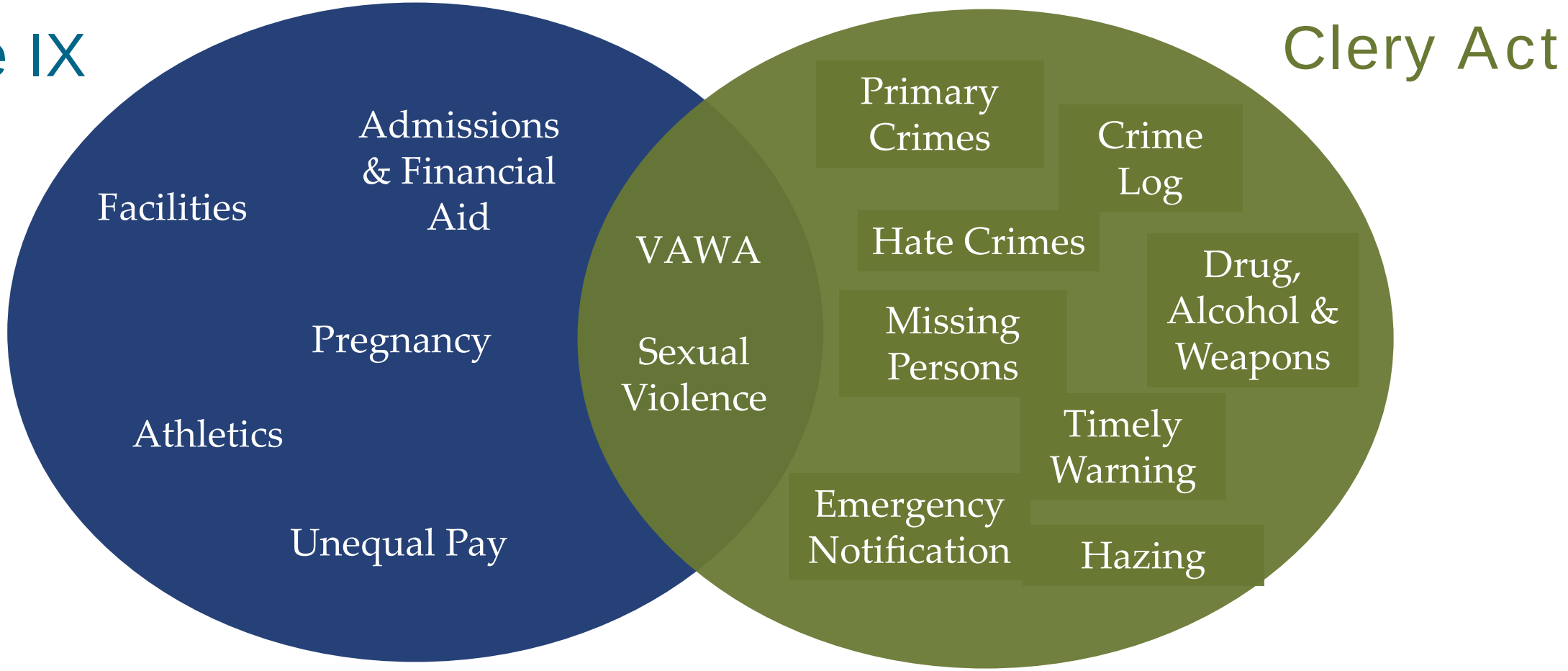
This session is not legal advice, and attendees are advised to consult with institutional counsel

THE EVER-EVOLVING LANDSCAPE OF TITLE IX

01

OVERLAPS

The Clery Act is not Title IX
2013 VAWA amended the Clery Act (they are not separate).



TITLE IX—PROHIBITION OF SEX DISCRIMINATION

SEX DISCRIMINATION PROHIBITED

SEC. 901. (a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:



TITLE IX

Title IX of the Education Amendments Act of 1972

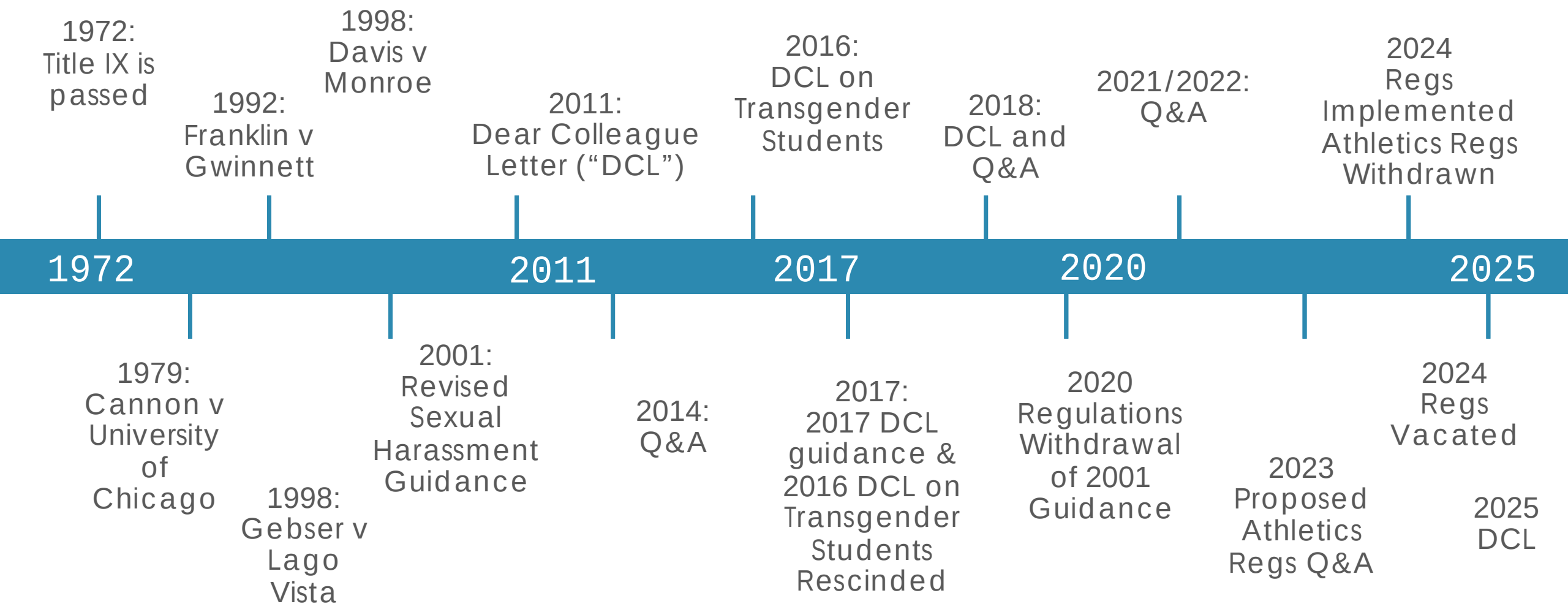
”No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

20 U.S.C. § 1681 (1972).



THE HISTORY OF TITLE IX

A TIMELINE



SINCE 1975...

Recipients have been required to . . .

- Notify students (defined to include persons who have gained admission) of their nondiscrimination policies and to resolve student complaints of sex discrimination.
- Maintain nondiscrimination notices and adopt and publish grievance procedures
- Prohibit discrimination based on pregnancy or related conditions
- Prohibit sex-based distinctions based on parental, family, or marital status
- Prohibit discrimination on the basis of sex in employment
- Balance equity with promptness

TITLE IX APPLIES TO ALL FORMS OF SEX DISCRIMINATION

- Sexual Harassment
- Achievement Awards
- Athletics
- Benefits
- Financial Aid
- Leaves of absence and re-entry policies
- Opportunities to join groups
- Pay rates
- Recruitment
- Retention Rates
- Safety
- Screening Exams
- Sign-on Bonuses
- Student and Employee Benefits
- Thesis Approvals
- Vocational or College Counseling
- Research opportunities

THE TITLE IX REGULATIONS (2020)
SEXUAL HARASSMENT ONLY

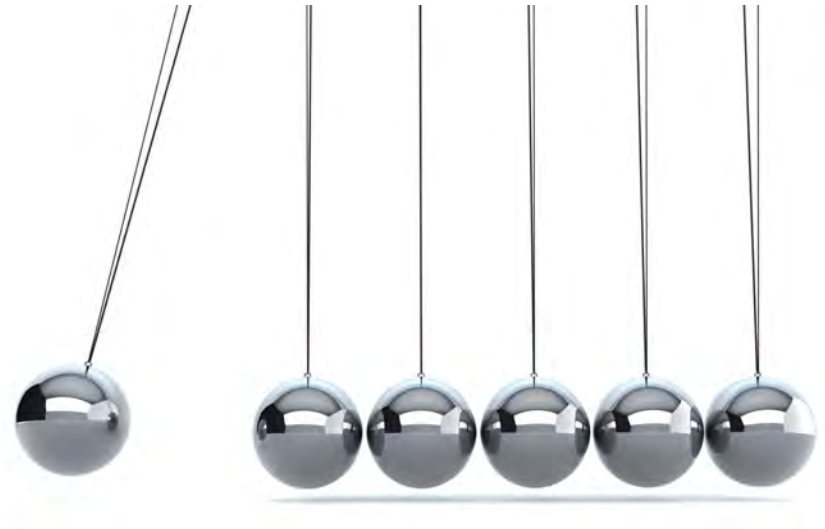
1. Narrows the definition of sexual harassment;
2. Narrows the scope of the institution's educational program or activity;
3. Narrows eligibility to file a complaint;
4. Develops procedural requirements for the investigation and adjudication of sexual harassment complaints, only.

ON THE NATIONAL FRONT: HISTORICALLY

We used to have one approach to addressing sexual and interpersonal violence and other harms and inequities on college campuses under law

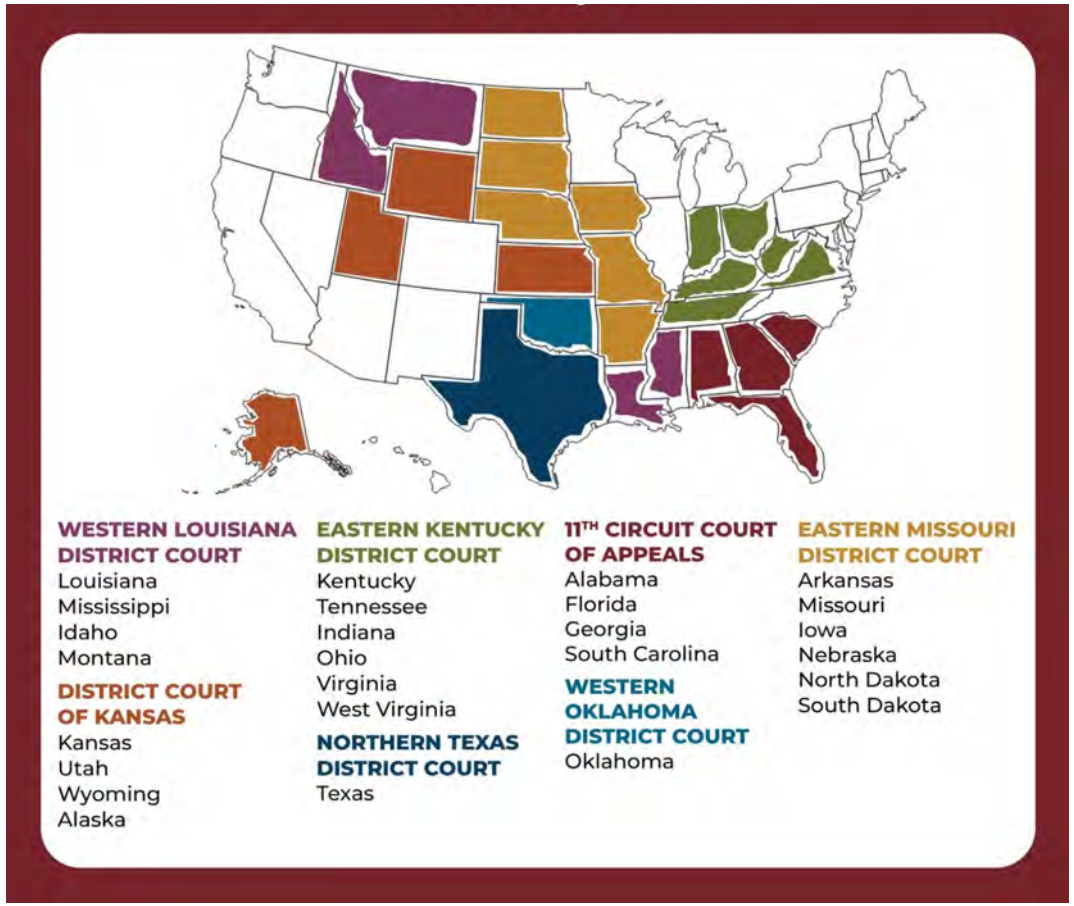
ON THE NATIONAL FRONT: MORE RECENTLY

- Some might say that there have been some *slight* disagreements over political issues in the United States
- Unfortunately, higher ed is being impacted by the pendulum



FEDERAL LAW/REGULATIONS STATUS UPDATE

- 2024 Title IX Regulations: vacated nationally. 2020 Regulations are back in force nationally.
- Title IX Participation in Athletics Based on Gender Identity withdrawn
- Clery Act: Stop Campus Hazing Act: passed into law
- Take It Down Act: passed into law



THE ED DEPARTMENT

- Focus on Title VI
- Title IX focus on athletics and bathroom/locker room use



FEBRUARY 14 DCL AND JULY 29 DOJ LETTER

Nothing says "Valentine's Day" like a letter beginning:

Discrimination on the basis of race, color, or national origin is illegal and morally reprehensible. Accordingly, I write to clarify and reaffirm the nondiscrimination obligations of schools and other entities that receive federal financial assistance from the United States Department of Education (Department). This letter explains and reiterates existing legal requirements under Title VI of the Civil Rights Act of 1964, the Equal Protection Clause of the United States Constitution, and other relevant authorities.

FEBRUARY 14 DCL

- Sought to extend the reasoning of the Supreme Court *SFFA* decision beyond admissions
- Ostensibly about Title VI, race, color, national origin. But…
- Caution areas:
  - Training that could include stereotype content
  - Requiring participation in certain activities
  - Sponsoring programs that make some people ashamed or intrinsic guilt for things that others with their identities did
  - Creating essay prompts or other ways to get people to expose their race and using that as a proxy

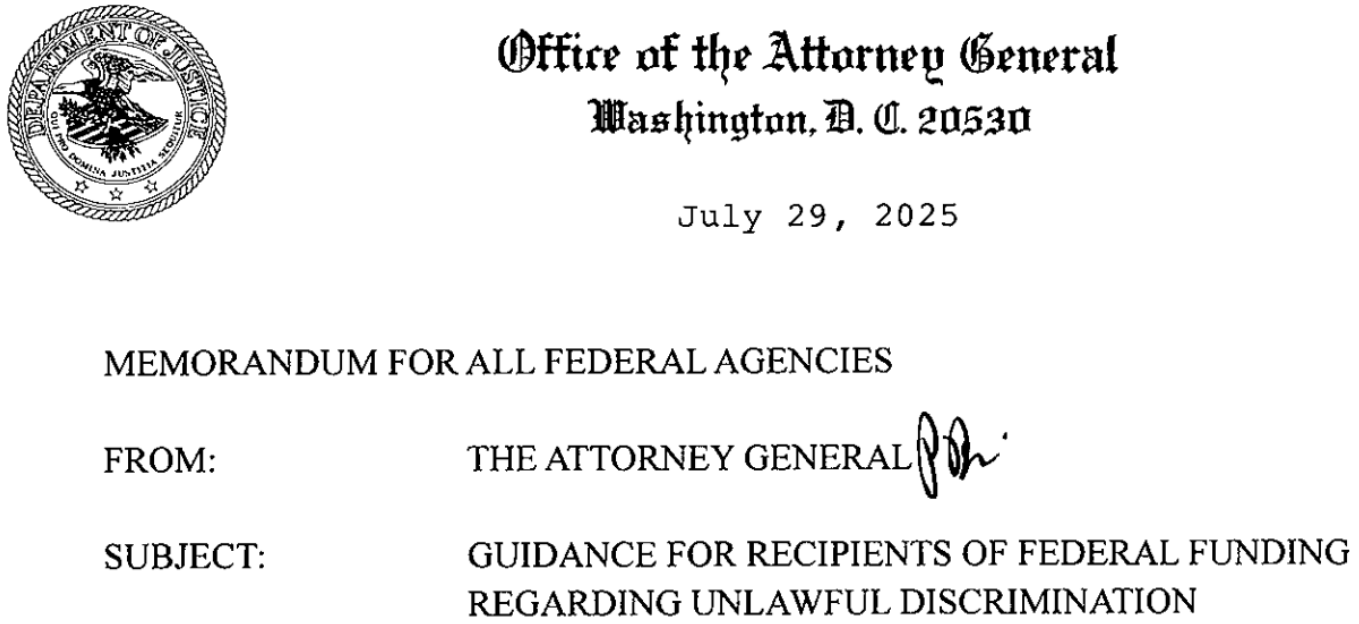
- DCL
- FAQ
- GRS Analysis Article

- Currently enjoined.

JULY 29 DOJ LETTER

- Guidance document.
- Doesn't read like any other DOJ guidance document I have ever seen.

- Letter



Office of the Attorney General
Washington, D. C. 20530

July 29, 2025

MEMORANDUM FOR ALL FEDERAL AGENCIES

FROM: THE ATTORNEY GENERAL

SUBJECT: GUIDANCE FOR RECIPIENTS OF FEDERAL FUNDING REGARDING UNLAWFUL DISCRIMINATION

JULY 29 DOJ LETTER

- Builds on the concepts of the Dear Colleague Letter.
- Includes Title IX and sex discrimination
- “[T]his guidance identifies "Best Practices" as non-binding suggestions to help entities comply with federal antidiscrimination laws and avoid legal pitfalls; these are not mandatory requirements but rather practical recommendations to minimize the risk of violations.



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- Anything new here?
- Unlawful discrimination to include preferences
- Proxies for unlawful discrimination



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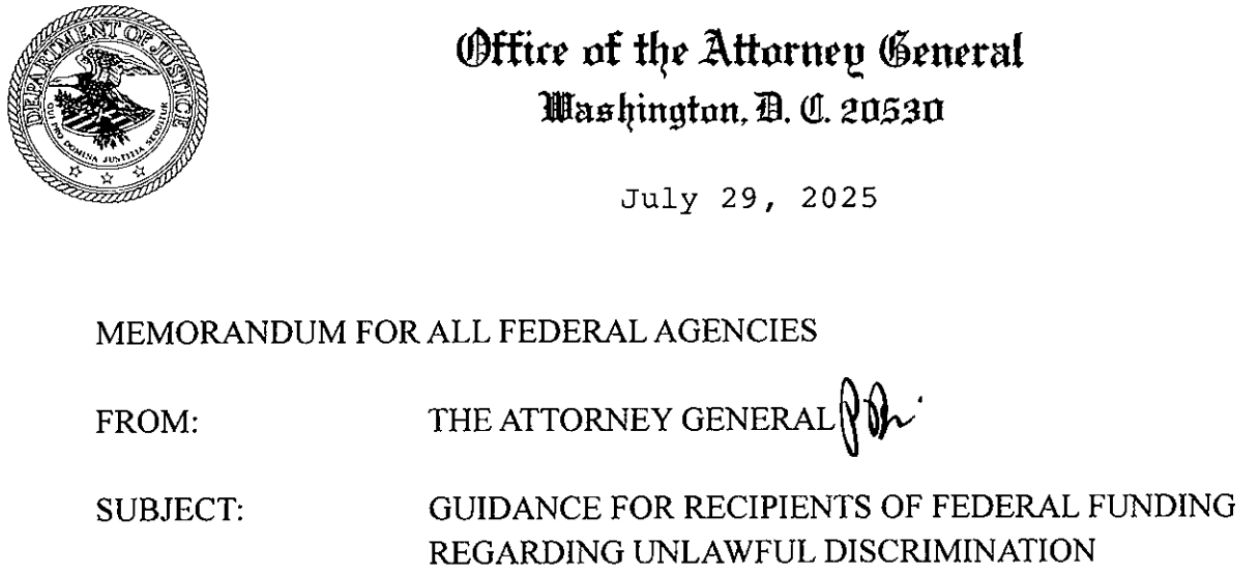
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JULY 29 DOJ LETTER- SEPARATE SPACES



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- Push for sex-segregated athletic competitions and facilities such as bathrooms, showers, locker rooms, residence halls

JULY 29 DOJ LETTER

- Separate training sessions
- Separate facilities or resources (except bathrooms/showers)
- Program eligibility separation as “implicit segregation”



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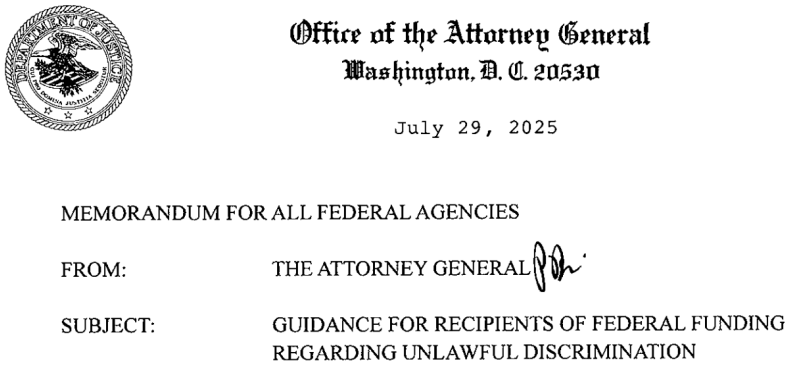
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JULY 29 DOJ LETTER

"Unlawful DEI training programs"

- Through their content, structure, or implementation-stereotype, exclude, or disadvantage individuals based on protected characteristics or create a hostile environment.
- Excludes or penalizes individuals based on protected characteristics.
- Creates an objectively hostile environment through severe or pervasive use of presentations, videos, and other workplace training materials that single out, demean, or stereotype individuals based on protected characteristics.



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TITLE IX, CLERY, AND CHEVRON

02

LET'S TALK STATUTE/REGS/GUIDANCE

- The last 15 years have had quite a bit of regulatory and guidance changes, and sometimes even changes to statutes.
- But what is authoritative? Statutes? Regulations? Guidance?

- And what about *Chevron* deference?

IN THE COURTS

- *West Virginia et al. v. Environmental Protection Agency (2022); Biden v. Nebraska* (2023);
- *Loper Bright Enterprises v. Raimondo and Relentless v. Dept. of Commerce* (2024).

- ***Loper Bright Enterprises v. Raimondo***



CHEVRON → LOPER BRIGHT

- Who *decides* now?
- **Expertise** v. **authority**.
- Factors:
  - Closer to statute;
  - Longer term of being interpreted;
  - Stability of interpretation; and
  - _____?_____

- What does this mean for the Department of Education?
  - Title IX/Title VI/ADA/504
  - Clery Act/VAWA/SCHA

STRENGTH OF SAFETY/EQUITY HIGHER ED REQUIREMENTS

Statutes

- Clery Act (part of Higher Education Act): 20 U.S.C. §1092(f)
- Title IX: 20 U.S.C. §1681
- Title VI: 42 U.S.C. §2000d

Regulations

- Clery Act: 34 C.F.R. § 668.46
- Title IX: 34 C.F.R. § 106
- Title VI: 34 C.F.R. § 100

Sub-Regulatory

- Guidance/Fact Sheets, Resolutions, Opinions, and Program Reviews

INTERSECTIONS WITH OTHER LAWS

03

SB 212 DEFINITION OF TERMS

- Same as Title IX (34 Code of Federal Regulations (CFR) 668.46)
  - Sexual Assault
  - Dating Violence
  - Stalking
- Different from Title IX (Texas Education Code, Sections 51.251 & 51.281)
  - "Sexual harassment" means unwelcome, sex-based verbal or physical conduct that:
    - in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
    - in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities at a postsecondary educational institution.

SB 212 EMPLOYEE REPORTING REQUIREMENTS

All employees* must promptly report to the institution's Title IX coordinator or deputy coordinator:

- Observations witnessed or information received while in the course and scope of their employment;
- That the employee reasonably believes constitutes an incident of sexual harassment, sexual assault, dating violence, or stalking;
- Committed by or against
  - A student who was enrolled at the institution at the time of the incident
  - An employee employed by the institution at the time of the incident

SB 212 – WHAT MUST BE REPORTED?

All information received by the employee, unless the report is made to an employee who is designated or licensed to maintain confidentiality.

- An employee must report:
  - All information relevant to the incident known to the employee
  - Regardless of when or where the incident occurred
  - For purposes of the institution's investigation
  - To redress the incident via interim measures or other forms of support
  - To convey an alleged victim's request for confidentiality

SB 212 EMPLOYEE REPORTING EXEMPTIONS

Four categories of employees are exempt from the reporting requirement:

1. Employees who are enrolled as students at the institution are not mandatory reporters under SB 212.
   - *Note*: Your policy may still define them as mandatory reporters.
2. Victims of sexual harassment, sexual assault, dating violence, or stalking are not mandatory reporters of/for their own incident.
3. Employees are not required to report information about an incident that is disclosed at a public awareness event on sexual harassment, sexual assault, dating violence, or stalking.

SB 212 EMPLOYEE REPORTING EXEMPTIONS

Four categories of employees are exempt from the reporting requirement:

4. Employees ***whose institution designates them*** as persons with whom students may speak confidentially may be limited in the information they must report.
    - IF the information they receive was conveyed under circumstances rendering the communication confidential or privileged under other law.
    - NOTE: Employees designated as confidential employees MUST fully report incidents observed or reported to them under circumstances outside the scope of a confidential communication without limitation.

SB 212 – CONFIDENTIALITY & PRIVILEGE

SB 212 ***does not*** authorize institutions to designate confidential employees for non-students who report sexual harassment, sexual assault, dating violence, or stalking.

However, employees ***whose duties authorize them*** to receive and maintain confidential or privileged information may do so for students and non-students, if received under circumstances rendering the communication confidential or privileged under other law.

- Licensed professional counselors
- Healthcare providers
- Clergy
- Legal counsel

SB 212 – WHAT MUST CONFIDENTIAL EMPLOYEES REPORT?

Employees designated or licensed to maintain confidentiality must report ***only*** the type of incident reported to them.

- They may not report information that would violate a student's expectation of privacy, unless
  - The employee is required to report information under other law
  - The student consents to disclosure

NOTE: Only a single report stating the type of incident is required when multiple confidential employees receive information about the same incident.

TITLE IX AND TITLE VII

Title VII

- Title VII prohibits employment discrimination based on race, color, religion, sex, or national origin. It applies to employer decisions about the terms, conditions, and privileges of employment, including hiring, firing, promotion, discipline, and benefits.
- Title VII protects employees and applicants for employment.
- The federal Equal Employment Opportunity Commission (EEOC) enforces Title VII compliance.

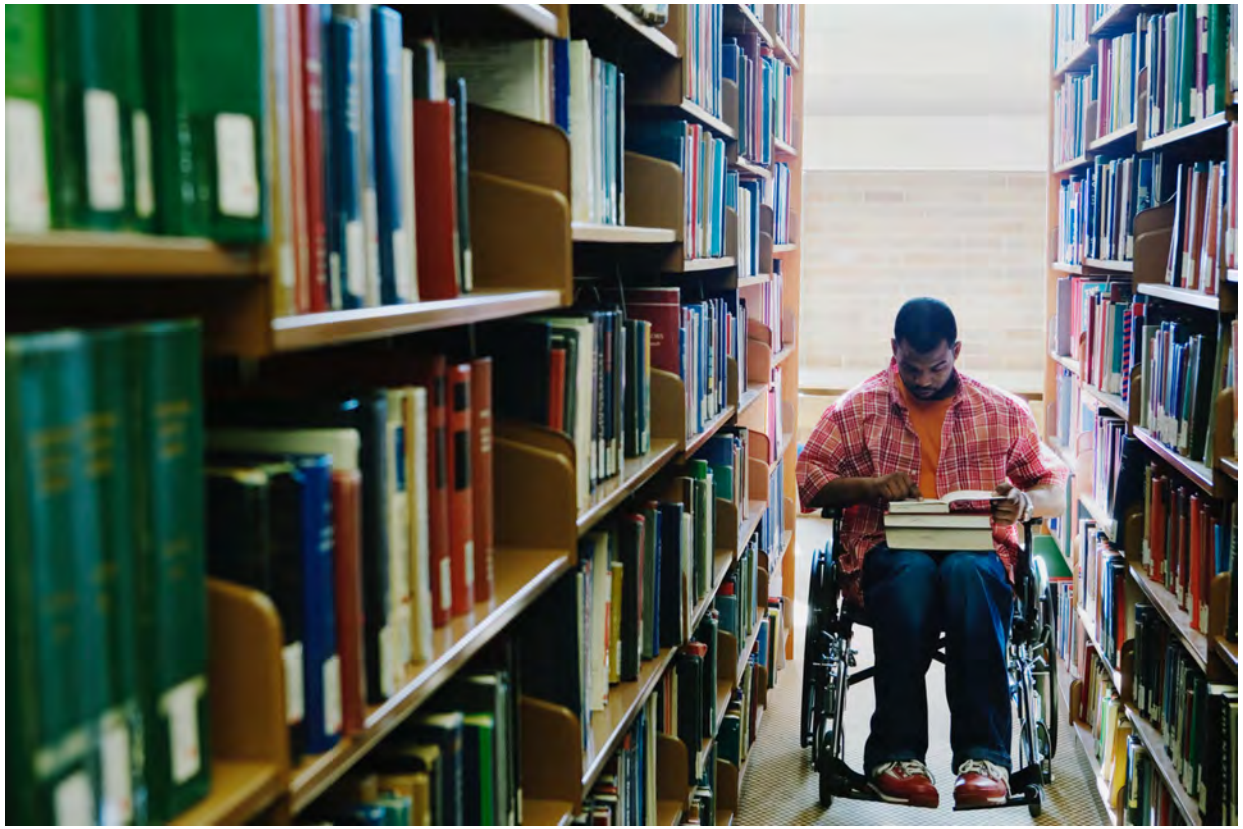
Title IX

- Title IX prohibits sex-based discrimination in education programs and activities that receive federal funds. In this context, sex-based discrimination includes sexual harassment and discrimination based on pregnancy or parenting status.
- Title IX protects all students and employees.
- The federal Office for Civil Rights (OCR) enforces Title IX compliance.

TITLE IX AND TITLE VII

- Both are about discrimination
  - Title IX focuses on the education context
  - Title VII focuses on the employment context
- Title VII may obligate the institution to move forward with certain reports of sex discrimination even if the alleged impacted party declines to file a formal complaint under Title IX
- Claims under Title VII typically requires that a party file with the EEOC prior to filing a lawsuit; Claims under Title IX do not require a complaint be filed with OCR prior to a lawsuit. Courts are mixed on if employees can seek relief under both.
- Remedies available vary under each law.

TITLE IX AND ADA/504



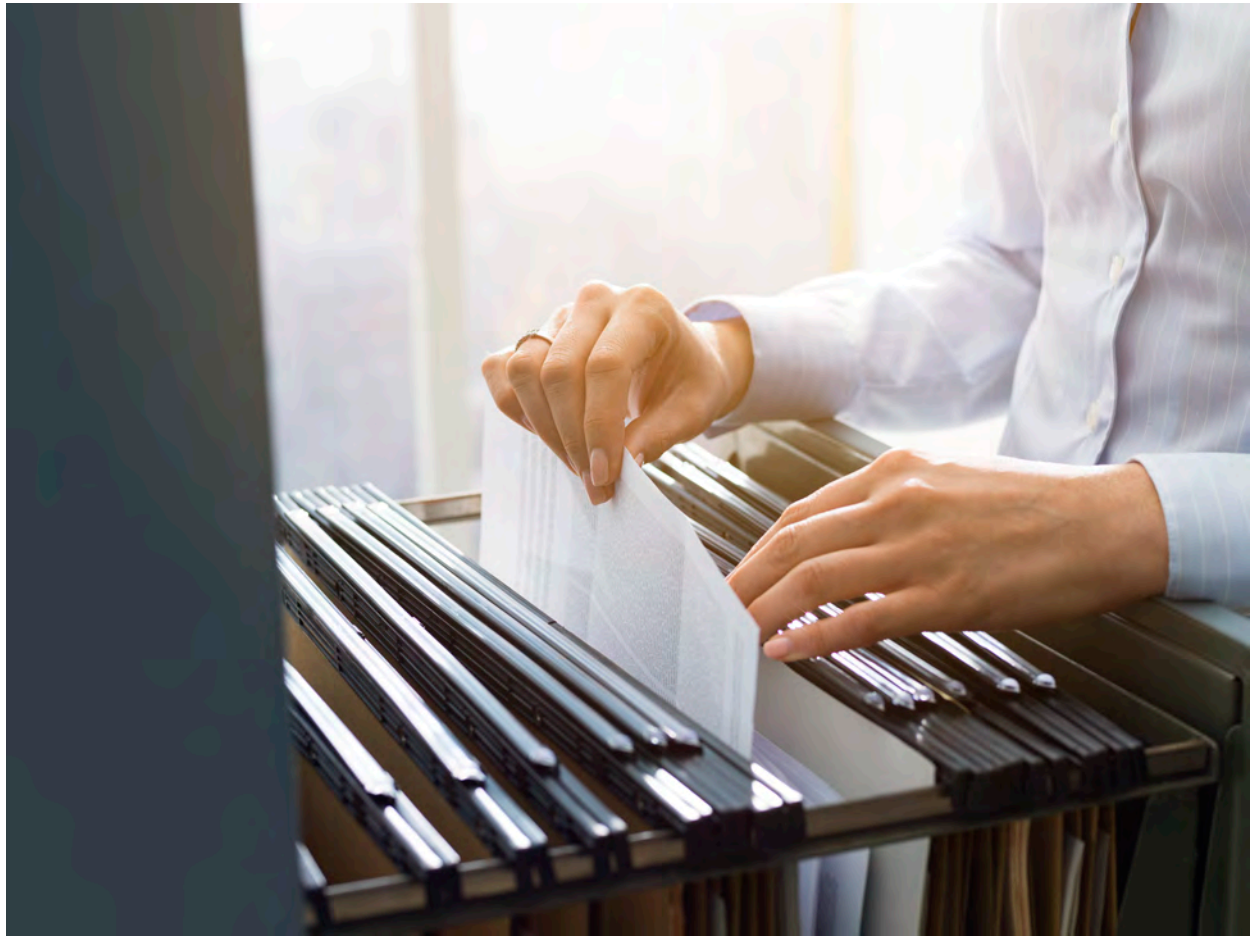
Important Takeaways

- Title IX process must allow for reasonable accommodations to allow full and equal participation.
- The interactive process should be used to determine the appropriate reasonable accommodations for the Title IX process.
- Confidentiality regarding a party's disability must be maintained.

TITLE IX AND FERPA

Important Takeaways

- FERPA protects student records and the Title IX regulations require privacy of the parties to be maintained.
- Title IX may "override" FERPA when it comes to gathering or sharing relevant information as required by the Title IX regulations.
- FERPA allows for release of some specific Title IX information, and the regulations provide for that appropriate release.



TITLE IX AND HIPAA



Important Takeaways

- Both Title IX and HIPAA protect privacy of records.
- Records should only be released with party's permission or as required under the law.
- Once a HIPAA record becomes part of a Title IX matter, it may be re-disclosed as permitted by Title IX and FERPA.

“SPECIFIC OFFENSES” (VAWA)

These are conformed to VAWA Amendments to the Clery Act**

** But…



DEFINITIONS: TITLE IX AND THE CLERY ACT

Some National Incident-Based Reporting System (NIBRS) changes. What they may and definitely (probably definitely) will not change.

Great time to talk to counsel…

DATING VIOLENCE

Definition:

- “Violence committed by a person
- Who is or has been in a social relationship of a romantic or intimate nature with the victim;
- The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of:
  - The length of the relationship;
  - The type of relationship; and
  - The frequency of interaction between the persons involved in the relationship”

DOMESTIC VIOLENCE

The term domestic violence is a “felony or misdemeanor crimes of violence” committed by:

A. A current or former spouse of the victim
B. A person with whom the victim shares a child in common
C. A person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner
D. A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the violence occurred
E. Or any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred

SEXUAL ASSAULT

Sexual Assault includes Rape, Sodomy, Sexual Assault With an Object, Fondling, Incest, and Statutory Rape.

These definitions come from the FBI.

SEX OFFENSES

A. Rape — The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

B. Sodomy — Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

C. Sexual Assault With an Object — The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

SEX OFFENSES PT 2

D. Fondling — The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

E. Incest — Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

F. Statutory Rape — Nonforcible sexual intercourse with a person who is under the statutory age of consent.

STALKING

- The term stalking means "engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

  A. fear for the person's safety or the safety of others; or

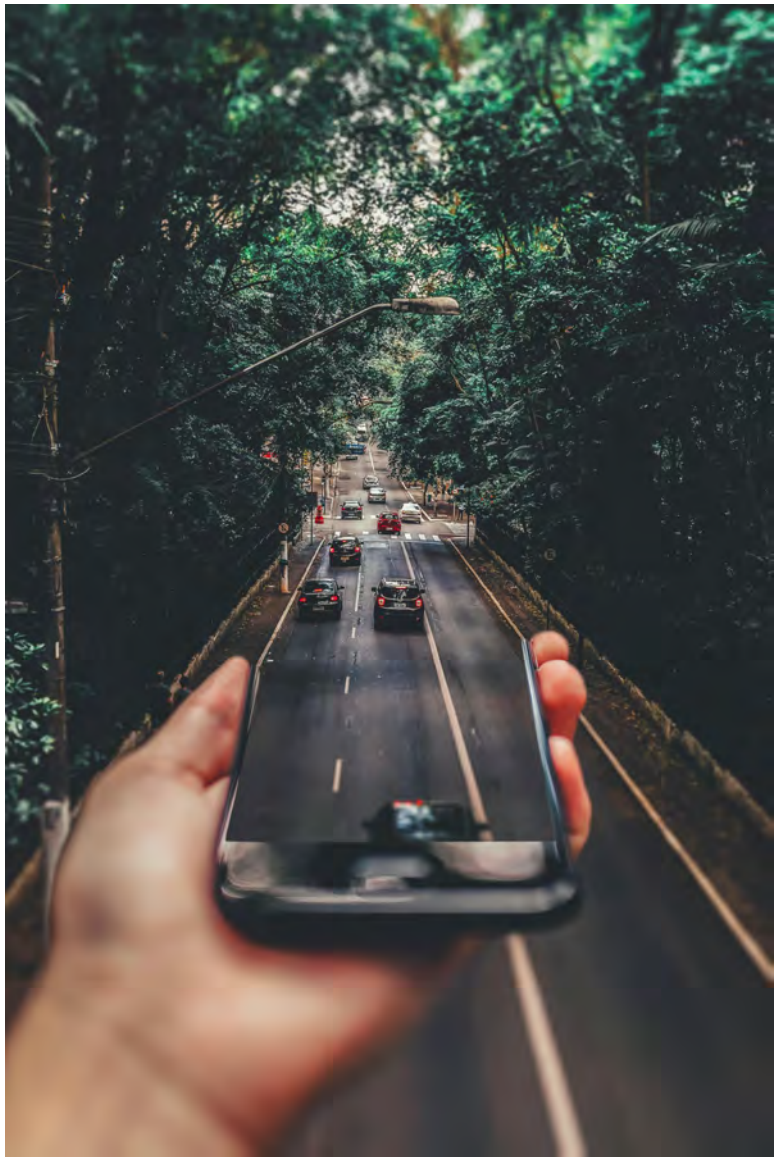
  B. suffer substantial emotional distress.



EXAMPLE: STALKING

- A student shares that another student is staring at them at the dining hall which is making them uncomfortable. Complainant says that they see the other student around campus a few times a week. There have been no communication attempts by Respondent.

- Will you address under Title IX? Why or why not? What other information do you need to know?



LOCATION AND GEOGRAPHY





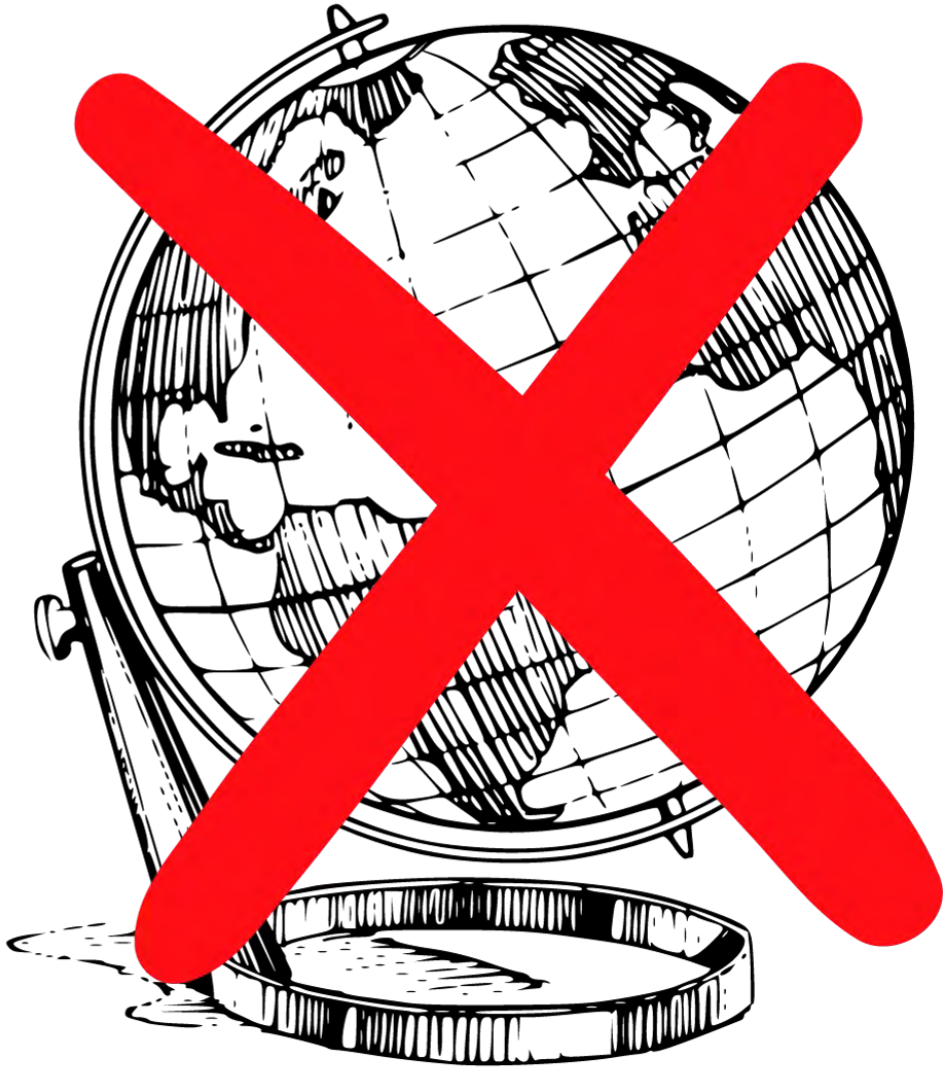
COVERED GEOGRAPHY

Includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

- ✓ On campus or in a building owned or controlled
- ✓ Off-campus incident that occurs as part of the institution's operations
- ✓ Institution exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus pursuant to § 106.44(a); or
- ✓ The incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution

NOT COVERED GEOGRAPHY

- x Off campus conduct, even if it has an impact on the educational program or activity;
- x Conduct that occurs outside of the United States.



WOULD THIS FALL UNDER TITLE IX?

Taylor, a 2nd year student, comes into the Title IX Office on Monday morning requesting a meeting, sharing that "Alex raped me at a party on Saturday at the 'A Capella House'."

Some members of the A Capella club rent a house off-campus and they frequently throw parties..

Taylor is alleging "Alex raped me when I was drunk at the A Capella House."

- Would this fall under Title IX?
- Why or why not?
- What other information would you need to find out to make this determination?



REQUIRED IDENTITY



COVERED INDIVIDUALS

ELIGIBILITY FOR TITLE IX'S PROTECTIONS:

"At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed." 34 C.F.R. § 106.30

- Applicant
- Enrolled or Employed
- Accepted or Hired



TITLE IX APPLICATION
(POST-MAY 2020)

Type of Conduct
- Hostile Environment
- Sexual Harassment
- Quid Pro Quo
- Sexual Assault
- Dating/Domestic Violence
- Stalking

+

Ed Program or Activity
- On campus
- Campus Program, Activity, or Building
- In the United States

+

Required Identity
- Complainant is participating or attempting to participate in the Ed Program or activity
- Institution has control over Respondent

→

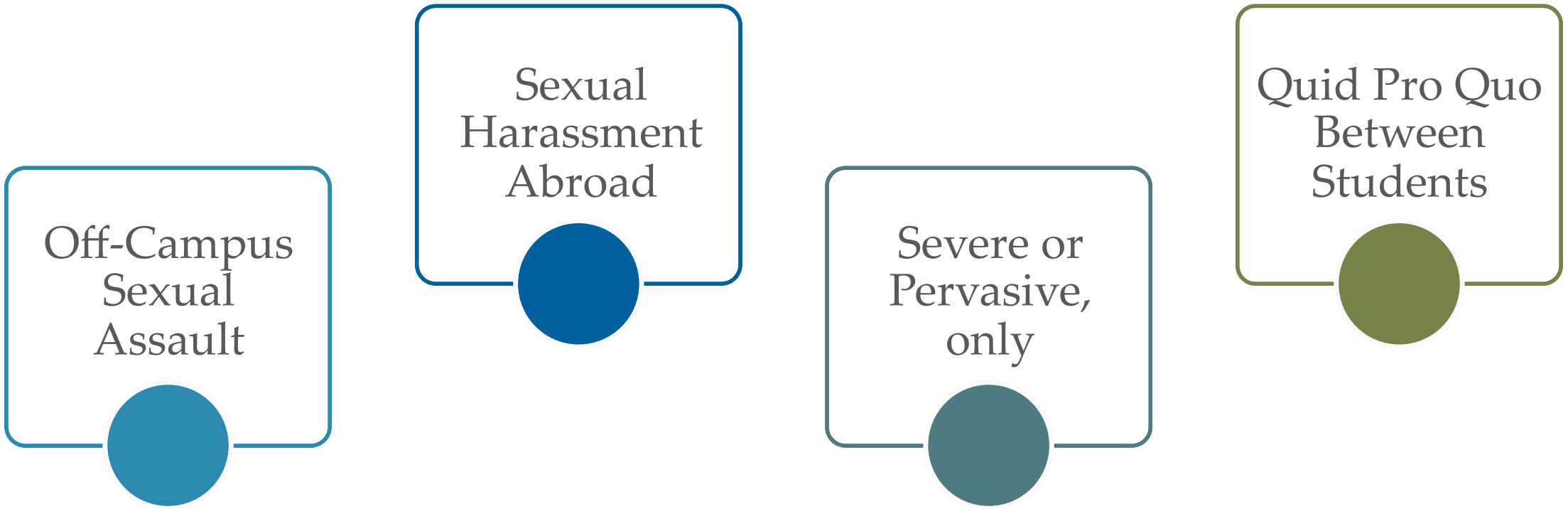
Apply 106.45 Procedures

Required Response:

Section 106.45 Procedures

CONDUCT FALLING OUTSIDE THE SCOPE OF TITLE IX

- Apply other institutional policies and procedures
- Ensure that those policies and procedures comply with VAWA/Clery, other intersecting federal and state laws



DON'T SLEEP ON VAWA

stalking, as required by paragraph (k) of this section; and

(vii) A statement that, when a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options, as described in paragraphs (b)(11)(ii) through (vi) of this section.

(12) A statement advising the campus community where law enforcement

IS THIS TITLE IX SEXUAL HARASSMENT?

You receive a 3rd party report from a Coach who heard some rumors about a student on their team, Dani.

Dani is constantly receiving sexually explicit photos via Snapchat from another teammate. Dani has asked them to stop numerous times. When they are at practice together, this individual often approaches Dani to make jokes of a sexual nature. This has happened about 3 times so far this week. Dani usually laughs it off. Dani emailed me saying they needed to miss practice today because they are "sick".

Why? Why not? What other information would you need to know?

ADDITIONAL REGULATORY REQUIREMENTS



ACTUAL NOTICE

Institution must respond when it has:

"Actual Knowledge…"

- When "an official of the recipient who has authority to institute corrective measures" has notice
- e.g., Title IX Coordinator

…of "sexual harassment that occurred within the school's "education program or activity…

- "Includes locations, events, or circumstances over which the recipient exercised substantial control" over the respondent and the context in which the sexual harassment occurred
- Fact specific inquiry focused on control, sponsorship, applicable rules, etc.

…against a "person in the United States"

- So, not in the study abroad context

A Narrowed Scope of Institutional Responsibility



OTHER REQUIREMENTS OF THE REGULATIONS

- Designation of a Title IX Coordinator
- Dissemination of policy
- Separation of Responsibilities
- Training and posting of training
- Impartiality
- Record Keeping

PREGNANCY & RELATED CONDITIONS

03

TODAY'S STUDENT

A greater number of college students weight class schedules with family and parenting responsibilities



The birth rate for women aged 20–24 was 63.0 births per 1,000 women in 2020, down 5% from 2019 (66.6)



The rate for women aged 25–29 was 90.2 births per 1,000 women, down 4% from 2019 (93.7)



In 2020, the mean age of mothers at first birth was 27.1 years, an increase from 27.0 in 2019

National Vital Statistics Reports Volume 70, Number 17, February 7, 2022
https://www.cdc.gov/nchs/data/nvsr/nvsr70/nvsr70-17.pdf

MORE ABOUT TODAY'S STUDENT...

- Globally and Socially Aware
- Digitally Connected and Plugged In
- Racially and Culturally Diverse
- First Gen (46%)
- Older (38% over age 25)
- Busier (25% raising children/64% working)
- Financially Strained (35% food and 9% home insecure)
- Too Many Stressors and Too Little Support



Data From: Who is Today's Student?
https://www.luminafoundation.org/resource/todays-student/

But first . . . why?

"Pregnancy is consistently the most common family-related reason given by female students" for why they dropped out of school, according to the US Department of Education.

Data from the CDC and National Education Statistics shows that about a quarter of girls who drop out of high school cite pregnancy or parenting as the reason.

"PREGNANCY AND RELATED CONDITIONS"

Includes "childbirth, false pregnancy, termination of pregnancy, or recovery therefrom"



NONDISCRIMINATION IS BROAD

Extends to those experiencing pregnancy and related conditions, and treating parental/family status differently based on sex.

Equitable access and ability to fully participate in academic program, activities, practicums/field placements, and athletics



TITLE IX OBLIGATIONS

Summary of the obligations relating to pregnant students

- Allow them to make up any missed work without penalty
- Treat them similarly to students with a temporary disability.
- They must be allowed to return to the same academic and extracurricular status as before their medical leave began.
- Must provide reasonable adjustments, like a larger desk, elevator access, or allowing frequent trips to the restroom



ADJUSTMENTS UNDER TITLE IX

"Medically necessary" based on assessment and "note" from treatment provider for immediate implementation

- Furniture size, shape, position
- Remote learning/hybrid learning
- Breaks, access to food or hydration
- Ability to reschedule tests
- Excused absences specific to treatment and care
- Late submission of expected work
- Alternative make up work of similar or like nature
- Excused absences for medical appointments

WHAT ABOUT "PARENTS" AND "PARENTING?"

Cannot apply a rule about the actual or potential parental or marital status of a student, applicant, or employee that treats people differently based on sex.

These are from 1975!



SEXUAL HARASSMENT: *SECTION 106.30*

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

(1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;

(2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or

(3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

PROVIDE SPACE (& TIME)

For expressing breastmilk or breastfeeding as needed

Break time for employees

"Reasonable modifications" for students may include time here

Clean space that is not a bathroom

Private: shielded from view, free from intrusion by others

PRIVACY CONSIDERATIONS

If there is a determination that information is needed that would substantiate the disability/condition, some considerations regarding privacy may include:

- Follow your privacy policies (including FERPA).
- Be mindful of what documents are requested and collected.
- How are you storing and securing files?
- Educating faculty members about how (not) to request medical information from the student
- Educating student on their rights to access and privacy.



DOCUMENTATION? SHOULD YOU ASK FOR IT?

NO, when:

- Needs are obvious (like a bigger uniform)
- Student previously provided sufficient documentation
- Reasonable modification is sitting or standing, keeping water nearby, taking breaks for basic needs
- Action is available to students for reasons other than P or RC without submitting such documentation



DO YOU HAVE A STUDENT LEAVE POLICY? DOES THIS STUDENT QUALIFY?

Treat pregnancy like a justification for a leave of absence for so long a period of time as deemed medically necessary by the student's doctor.

"TEMPORARY DISABILITY?"

Treat disabilities related to pregnancy and related conditions in the same manner and under the same policies as any other temporary disability or physical condition.

ADA/504 AND PREGNANCY

Pregnancy, alone, is not a disability…but:



SECTION 504

It may be considered a temporary disability in certain circumstances.

ADA

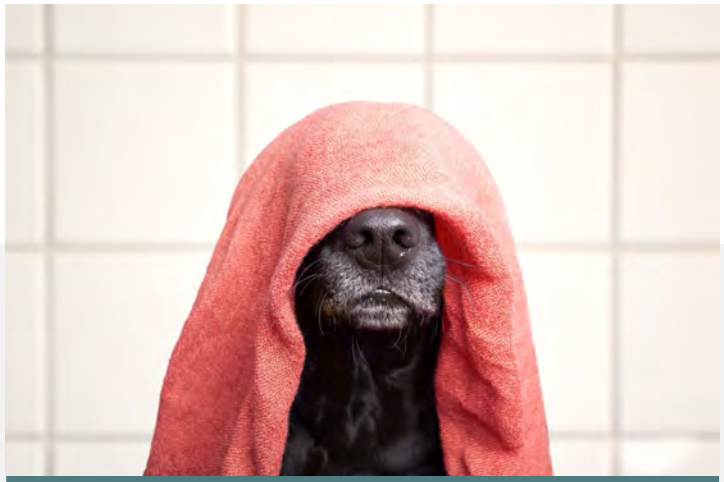
It may be considered a disability when one or more impairments related to pregnancy are present OR when a condition arising from pregnancy becomes long-lasting (i.e.: post partum depression or gestational diabetes that becomes Type II)

WHAT'S THE DIFFERENCE?

Title IX affords adjustments and/or support measures while ADA/504 affords access and accommodation; each ensure equitable access to educational programs or activities.



Adjustments are time-limited for the period of the documented "medical necessity"



Supportive measures have no medical requirements ; they require only a request as related to a Title IX matter



Accommodations require the presence of a "qualified" disability and/or condition

POLICY TO PRACTICE

Policies account not only for regulation but provide for a process that is understandable and –

- Identify a single point of first entry (a proactive practice)
- Provide consistent information using the correct terms and definitions
- Support the student into the correct lane or lanes to begin
- Identify appropriate services supports

PRACTICES THAT ACTUALIZE…

- A one-stop type of service and support consistent information and centralized reporting
- Timely consultation/communication between involved offices
- Effective case management team approach (multiple offices)
- Regular communication between involved offices and the individual student
- Documentation at each stage of service
- Education, education, education to the campus community

RECENT ED RESOLUTIONS & GUIDANCE

JUNE 2022

Salt Lake Community College Resolution Agreement

October 2022

Pregnancy and Parenting Resource

January 2023

Troy University Resolution Agreement

LESSONS LEARNED

- Make reasonable responsive adjustments
- Provide accessible information for pregnant students
- Designate a central contact to centralize response
- Respond promptly to pregnancy discrimination complaints
- Engage in the interactive process
- Consider whether there is a temporary disability
- Train employees on your rules and process

INTAKE & RESPONSE

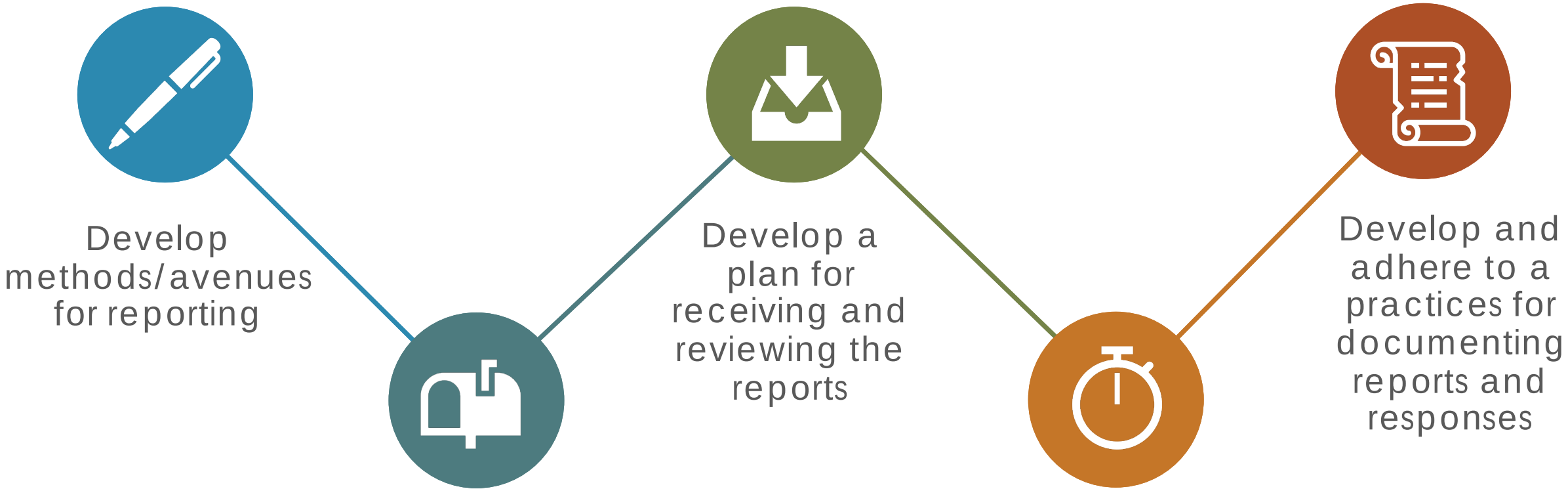
02

INITIAL RESPONSE REQUIREMENTS



1. Receipt of Report
2. Outreach/Response from Title IX Coordinator
3. Support Measures, whether or not Formal Complaint is filed
4. How to File
5. Options for Resolution

INFRASTRUCTURE FOR REPORTING



RECEIVING REPORTS AND INITIATING THE RESPONSE

1. Review the report

2. Determine the appropriate initial response

3. Promptly initiate that response

4. Document/record the receipt of the report and the response thereto

INITIAL OUTREACH

- First: Safety
- Email: Create Forms/Templates
- Phone
- In person: Use RA, Campus Safety
- Follow Up Emails



INITIAL MEETING WITH THE COMPLAINANT

- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available support
- Options for reporting
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps



SCENARIO: EMERGENCY REMOVAL OF STUDENT

- High threshold
- Not a determination of responsibility
- Whether or not grievance is underway
- Individualized
- Immediate threat (physical)
- Opportunity to challenge



SUPPORTIVE MEASURES

Non-Disciplinary

May not unreasonably burden the other party

Designed to restore or preserve equal access

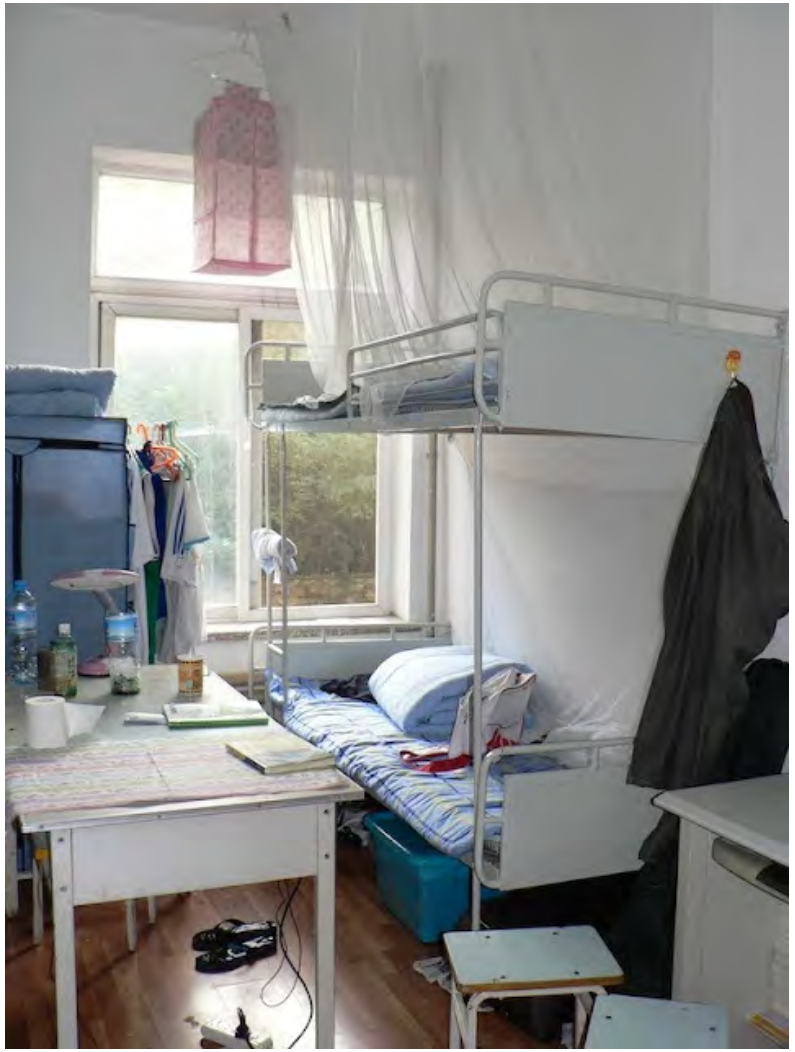
Non-punitive

As appropriate and reasonably available

Confidential

EXAMPLES OF SUPPORTIVE MEASURES

- Assistance obtaining access to counseling, advocacy, or medical services;
- Assistance obtaining access to academic support and requesting academic modifications and supportive measures;
- Changes in class schedules;
- Assistance requesting changes in work schedules, job assignments, or other work accommodations;
- Changes in campus housing;
- Safety escorts;
- Leaves of absence;
- Mutual restrictions on contact between the Parties (“No-contact” orders).



“MUTUAL RESTRICTIONS ON CONTACT BETWEEN THE PARTIES”



POST MEETING TASKS

Document the meeting

Send a summary email with resources, options, next steps

Follow up

Make connections

Provide the supportive measures

Document supportive measures requested, provided, and not provided. Where not provided, indicate why.

HOW TO PROCEED?

Support-Based Only

No formal process



Alternative/ Informal

Signed agreement;
Voluntary;
What records?



Formal/ Investigation/ Hearing

All requirements of 106.45



SUPPORT-BASED RESOLUTION

3(a)

SUPPORT-BASED RESOLUTIONS

- Supportive Measures
- Targeted Education
- Educational Conversations



FORMAL COMPLAINT & NOTICE REQUIREMENTS

03(b)

FORMAL COMPLAINT FILED

By Complainant

By the Title IX Coordinator

FACTORS TO CONSIDER WHEN DETERMINING WHETHER TO FILE A FORMAL COMPLAINT

Allegations of Violence

Threats

Use of Weapons

Serial predation

A FORMAL COMPLAINT MUST INCLUDE

The Complainant's digital or physical signature, or an indication that the Complainant is the person filing the Formal Complaint;

An allegation of Prohibited Conduct as defined under this Policy. This may include: Where the incident(s) occurred; what incident(s) occurred; when the incident(s) occurred;

Identity of Respondent, if known;

A request for a resolution or investigation.

DISMISSING COMPLAINTS

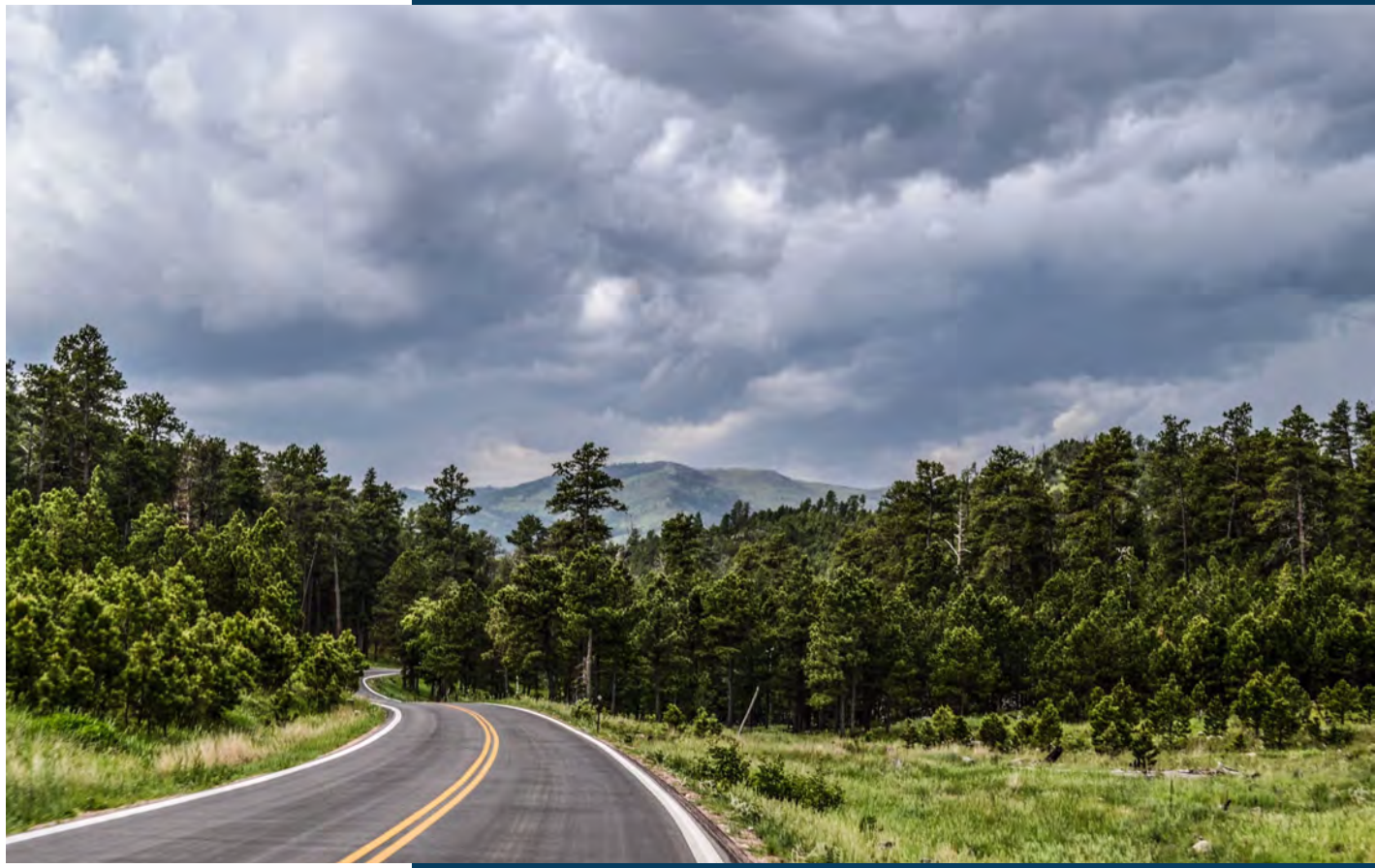
Mandatory

- Not sexual harassment
- Did not occur in program or activity
- Not against person in the U.S.

Discretionary

- Complainant withdraws complaint
- Respondent no longer enrolled/employed
- School unable to collect sufficient info

CAN PROCEED UNDER OTHER POLICY



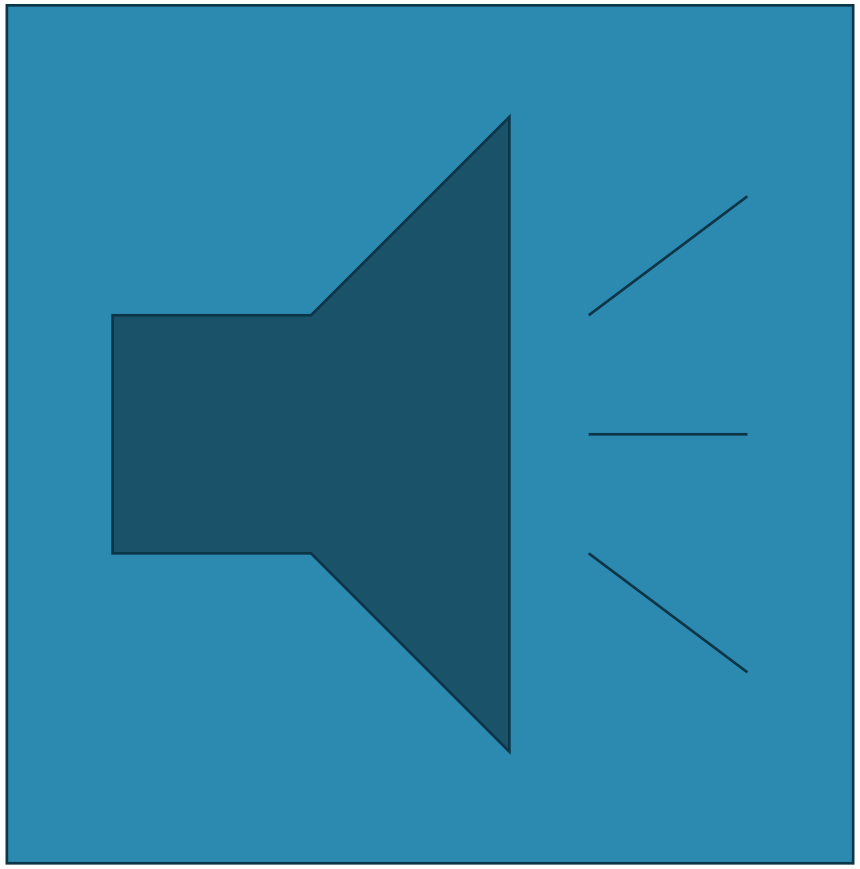
NOTICE OF ALLEGATION REQUIREMENTS (1)

- Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
  - the identities of the parties involved in the incident, if known,
  - the conduct allegedly constituting sexual harassment under § 106.30,
  - and the date and location of the alleged incident, if known.
- The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.

NOTICE OF ALLEGATION REQUIREMENTS (2)

- The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.
- The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

NOTIFYING THE RESPONDENT



- FIRST- SAFETY
- Make sure Support Available
- Written Notification Meetings and Sufficient Time to Prepare
- Don’t Send on a Friday
- Don’t send at 5pm
- How will you notify?
- Consider impact of notification on Respondent

ADVISOR OF CHOICE

The advisor can be anyone, including an attorney

Institutions cannot place restrictions on who can serve

No training required

Institution must provide advisor for the purposes of questioning only.

INITIAL MEETING WITH RESPONDENT

- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available supportive measures
- Supportive measures that were provided to complainant that impact them
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps



POST MEETING TASKS

Document the meeting

Send a summary email with resources, options, next steps

Follow up

Make connections

Provide the supportive measures

Document supportive measures requested, provided, and not provided. Where not provided, indicate why.

COMPLAINT RESOLUTION

Informal Resolution

- Formal Complaint Required
- Parties must agree
- Can withdraw form process
- Alternate Resolution/Mediation
- No appeal

Formal Resolution

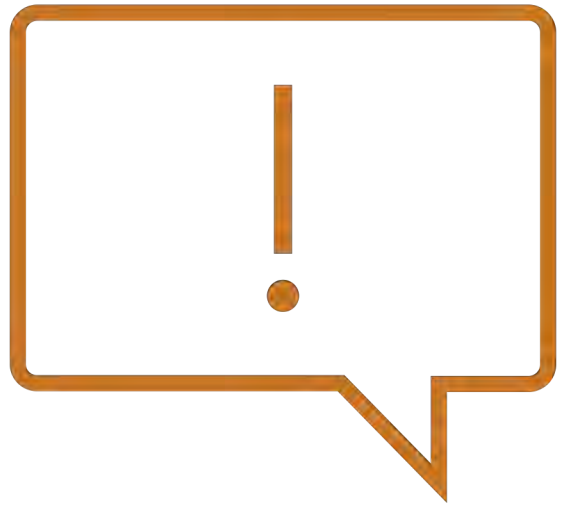
- Investigation and Adjudication process in compliance with Section 106.45

ALTERNATIVE RESOLUTION

03(c)

ALTERNATIVE RESOLUTION REQUIREMENTS

- Formal Complaint must be filed
- Participation in an alternative resolution must be voluntary
- Must occur prior to resolution via a formal process
- Parties must be permitted to withdraw and seek formal resolution
- Voluntary, written consent to the alternative resolution must be obtained
- Facilitators of alternative resolution must be trained



ALTERNATIVE RESOLUTION NOTICE REQUIREMENTS

- The allegations,
- The requirements of the alternative/informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the alternative resolution process
- And resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the alternative resolution process, including the records that will be maintained or could be shared;





FACILITATORS OF ALTERNATIVE RESOLUTION AS WITNESSES

INFORMAL/ALTERNATIVE RESOLUTION IS PROHIBITED TO RESOLVE ALLEGATIONS THAT AN EMPLOYEE SEXUALLY HARASSED A STUDENT.



FORMAL RESOLUTION

03(d)

PROCEDURAL REQUIREMENTS FOR INVESTIGATIONS

Notice to BOTH parties

Equal Opportunity to Present Evidence

An advisor of choice

Written notification of meetings, etc., and sufficient time to prepare

Opportunity to review all directly related evidence, and 10 days to submit a written response to the evidence prior to completion of the report

Report summarizing relevant evidence and 10-day review of report prior to hearing

PROCEDURAL REQUIREMENTS FOR HEARINGS

Must be live, but can be conducted remotely

No Compelling participation

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution

Decision maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

FINAL RULE § 106.45(B)(8)

"Institutions must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein."

CONSENT AND INCAPACITATION

01

CONSENT (SYSTEM MODEL POLICY)

A voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity. Consent to one act does not imply consent to another. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent can be withdrawn at any time. Any expression of an unwillingness to engage in any instance of sexual activity establishes a presumptive lack of consent.

Consent is not effective if it results from: (a) the use of physical force, (b) a threat of physical force, (c) intimidation, (d) coercion, (e) incapacitation or (f) any other factor that would eliminate an individual's ability to exercise his or her own free will to choose whether or not to have sexual activity.

A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be a voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity.

INCAPACITATION (SYSTEM MODEL POLICY)

Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. An individual may be incapacitated if they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in a sexual interaction.

When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence or impaired by use of the drug. Alcohol and other drugs impact each individual differently, and determining whether an individual is incapacitated requires an individualized determination.

INCAPACITATION CONTINUED (SYSTEM MODEL POLICY)

After establishing that a person is in fact incapacitated, the University asks two questions:

- Did the person initiating sexual activity know that the other party was incapacitated? and if not,
- Should a sober, reasonable person in the same situation have known that the other party was incapacitated?

If the answer to either of these questions is "YES," consent was absent and the conduct is likely a violation of this Policy.

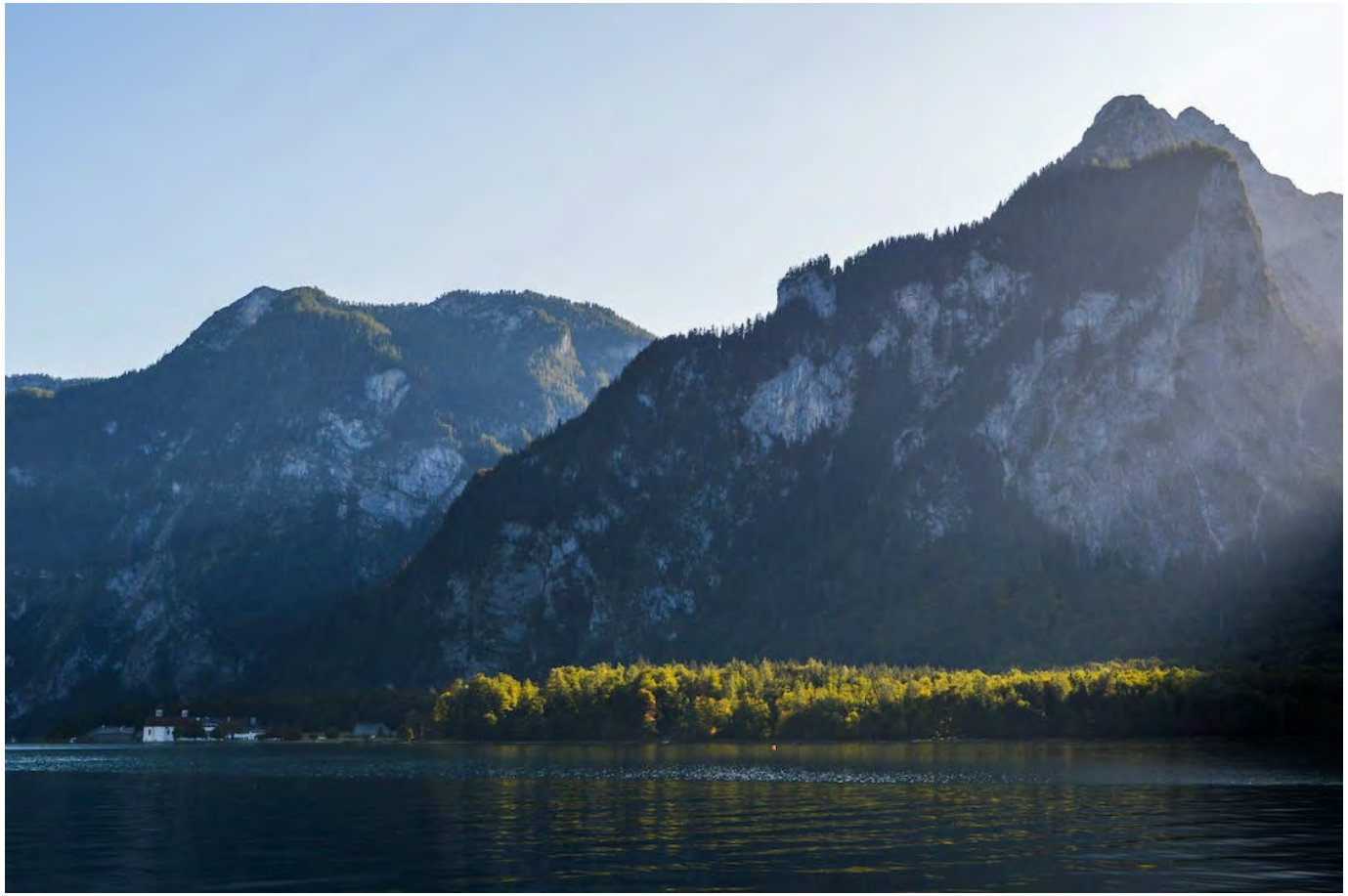
A Respondent will be found to have violated policy only if the Respondent knew or should have known that the person was incapacitated.

OTHER APPLICABLE DEFINITIONS (SYSTEM MODEL POLICY)

Coercion – The use of unreasonable pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including psychological or emotional pressure, physical or emotional threats,

Intimidation – Unlawfully placing another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

WHAT ARE SOME DIFFICULT QUESTIONS YOU STRUGGLE WITH ASKING?



THE “HARD” QUESTIONS

Details about the sexual conduct

Seemingly inconsistent behaviors

Inconsistent evidence/information

What they were wearing

Alcohol or drug consumption

Probing into reports of lack of memory

HOW TO ASK THE HARD QUESTIONS

- Lay a foundation for the questions
  - Explain why you are asking it
  - Share the evidence that you are asking about, or that you are seeking a response to
- Be deliberate and mindful in your questions
  - “Can you tell me what you were thinking when…”
  - “Help me understand what you were feeling when…”
  - “Are you able to tell me more about…”



EVALUATING EVIDENCE

01

Is it relevant?

Is the evidence important, or of consequence, to the fact-finding process?

02

Is it authentic?

Is the item what it purports to be?

03

Is it credible/reliable?

Is the evidence worthy of belief and can the decision maker rely on it?

04

What weight, if any, should it be given?

How important is the evidence to the fact-finding process?

"RELEVANT" EVIDENCE

The Department declines to define "relevant", indicating that term "should be interpreted using [its] plain and ordinary meaning."

See, e.g., Federal Rule of Evidence 401 Test for Relevant Evidence:

"Evidence is relevant if:

(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and

(b) the fact is of consequence in determining the action."

EVIDENCE THAT IS NOT "RELEVANT"

"Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant,

- unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
- if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent."

"require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege."

- Physical and mental health records and attorney-client privileged communications would fit within scope of this prohibition

ASSESSING RELEVANCE

Why Does it Matter?

- Unsure about the relevance about a particular item of evidence? Ask the person who has proffered it.
- Character Evidence
- Polygraph Evidence
- Opinion Evidence

OPINION EVIDENCE

When might it be relevant?

How do you establish a foundation for opinion evidence so that the reliability of the opinion can be assessed?



OPINION EVIDENCE: TRY IT!

You are investigating an allegation that Casey had sex with Taylor when Taylor was incapacitated. You interview several witnesses, one of whom made the following statement:

"I got to the party pretty late, and Taylor was already lit."

"Taylor was wasted. Like totally messed up. There is no way they could have given permission for sex"

ASSESSING AUTHENTICITY

Investigating the products of the Investigation



Never assume that an item of evidence is authentic.

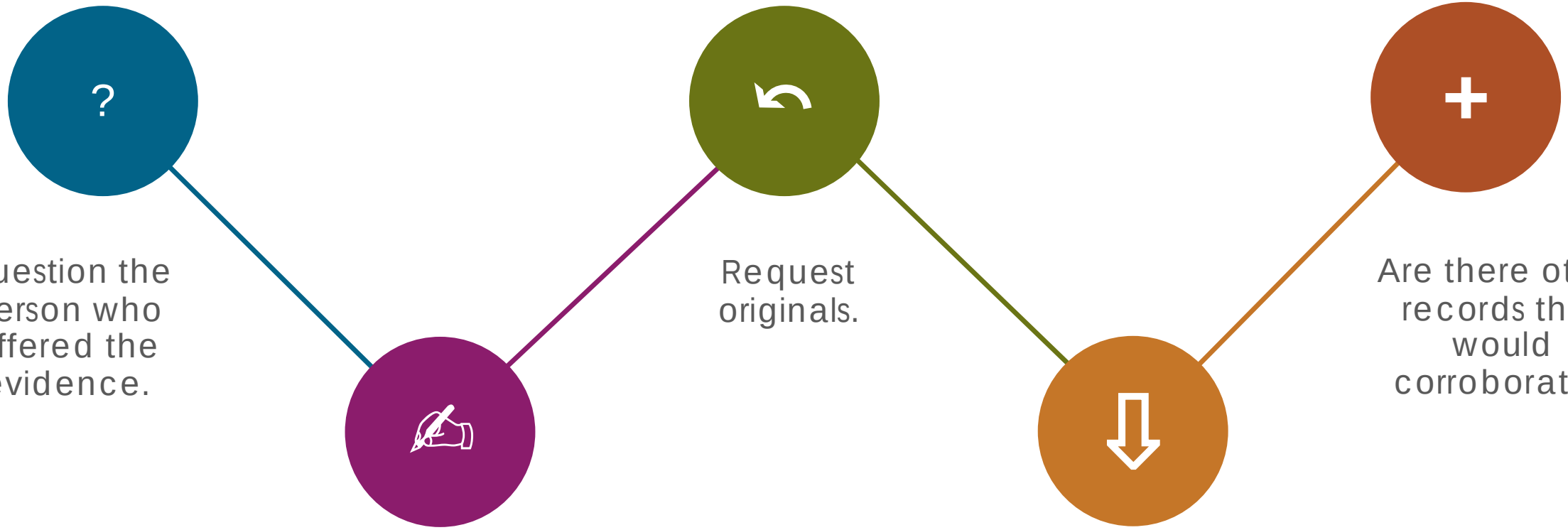


Ask questions, request proof.



Investigate the authenticity if necessary.

IS IT AUTHENTIC?



ASSESSING CREDIBILITY AND RELIABILITY

No formula exists, but consider the following:

Sufficiency of detail and specificity

Ability to recollect events

Material Omission

Internal Consistency

Inherent Plausibility

Motive to falsify

Corroboration

BARRIERS TO EVIDENCE COLLECTION



- Non-participating parties
- Uncooperative witnesses
- Uncooperative advisors
- Identity of party or witness unknown
- Refusal to share materials
- Materials lost or no longer accessible
- Difficult topics

QUESTIONS?





UT SYSTEMWIDE TITLE IX ANNUAL TRAINING - DAY 2

A Practical Approach to Navigating Beyond Compliance

Martha Compton | Joseph Storch

August 2025

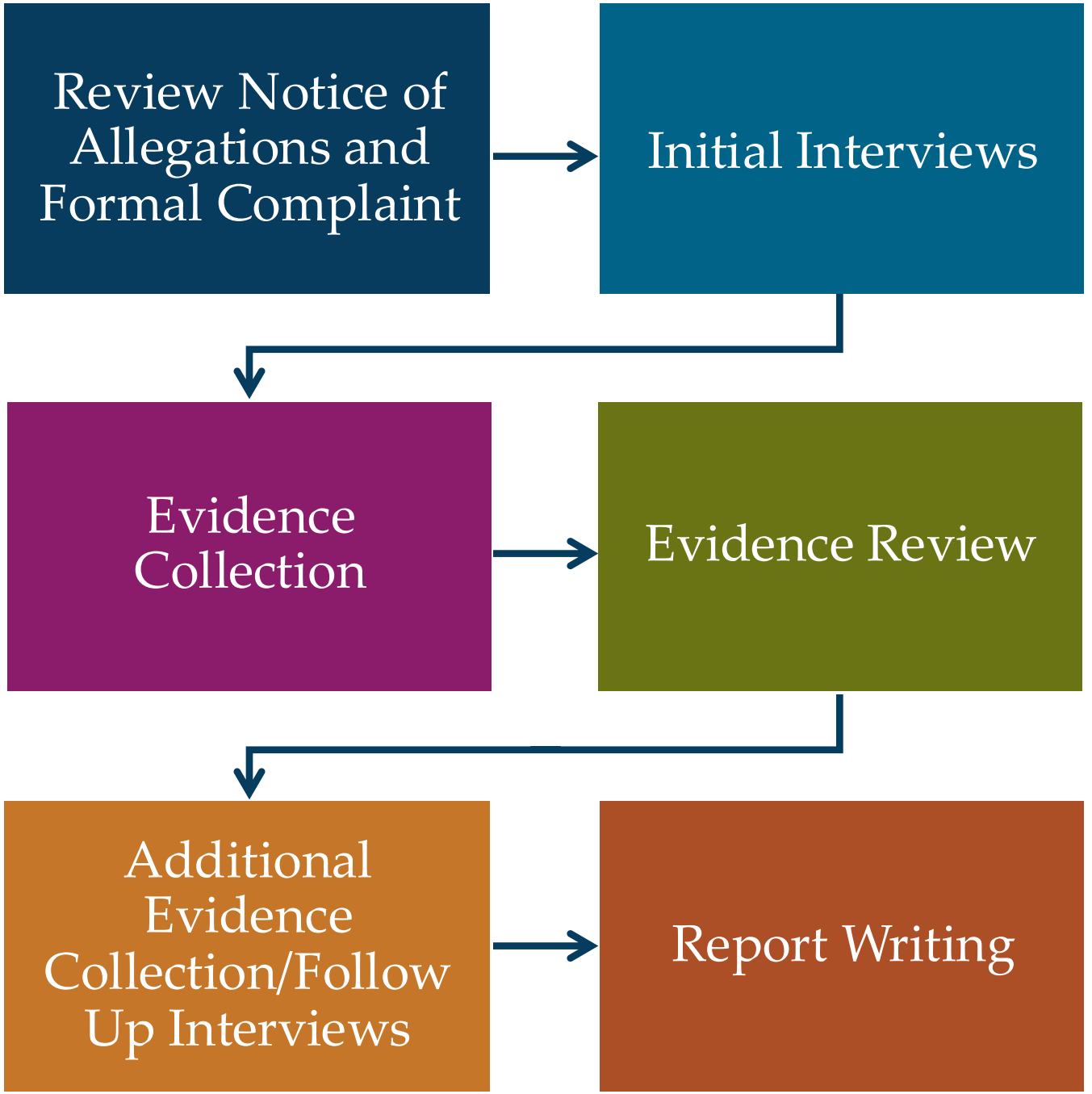
University of Texas, El Paso

GRAND RIVER | SOLUTIONS

DEVELOPING AN INVESTIGATIVE STRATEGY

01

ESSENTIAL STEPS OF AN INVESTIGATION



UNDERSTAND THE SCOPE OF THE INVESTIGATION



Review the Notice of Allegations and the Formal Complaint



Ask questions if unsure

IDENTIFY THE CLAIMS AND WHAT NEEDS TO BE PROVEN

- What will the decision maker be asked to decide?
- What does the formal complaint allege?
- What are the elements of each act of prohibited conduct alleged?

RAPE

Definition: The causing of penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Questions to ask:

1. Did Respondent penetrate Complainant's vagina or anus?
2. Was it without Complainant's consent?
   - *If so, what is the ground for lack of consent?*
     1. Did respondent fail to seek and obtain Complainant's consent?
     2. Did Respondent force Complainant?
     3. Did Respondent coerce Complainant?
     4. Was Complainant incapacitated and therefore incapable of consent?

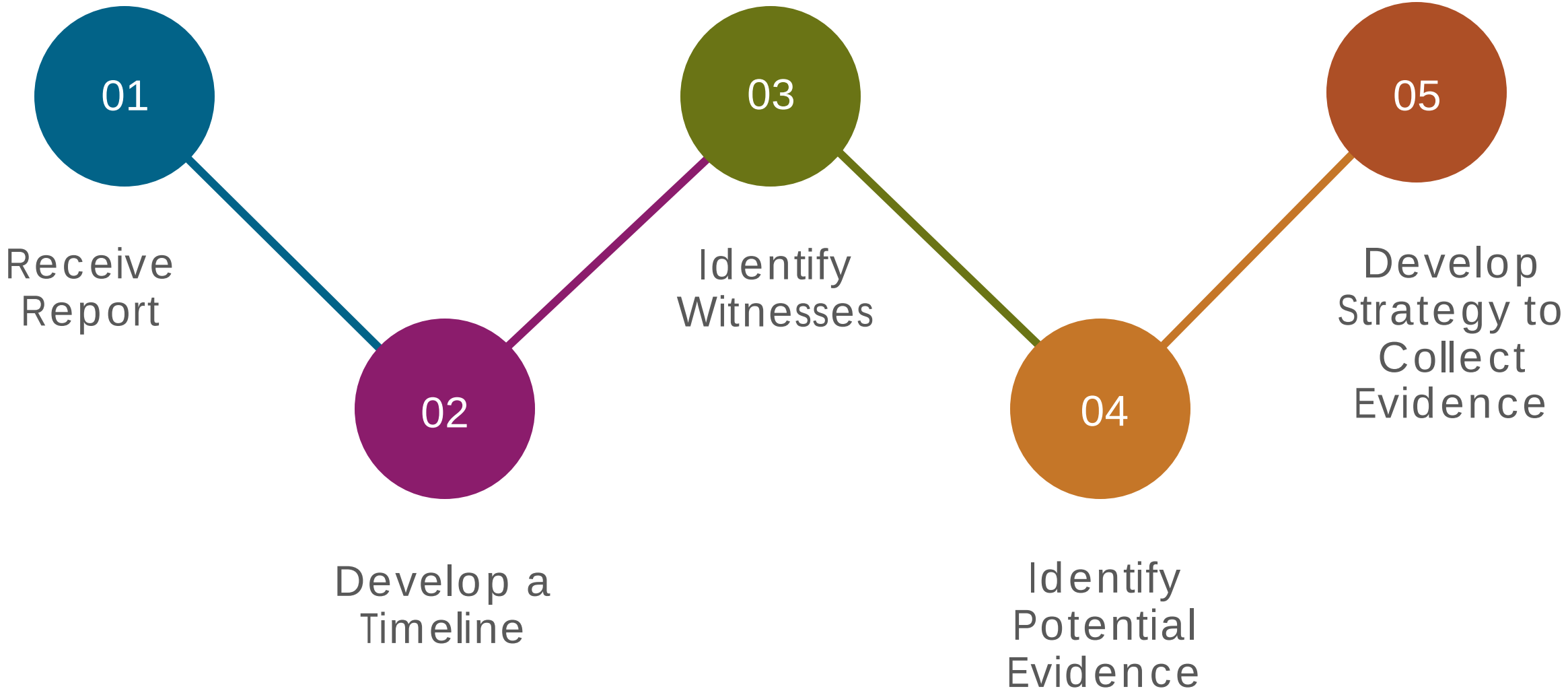
STALKING

Definition: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

Questions to Ask:

1. Did Respondent engage in a course of conduct?
2. Was that course of conduct directed at Complainant?
3. Would Respondent's conduct cause a reasonable person to either
   a. Fear for his or her safety or the safety of others, or
   b. Suffer substantial emotional distress?

THE PROCESS:
DEVELOPING AN INVESTIGATIVE STRATEGY



INVESTIGATION TIMELINE

Prior History

- Between the Parties?
- Of the Parties?

Pre-Incident

- Communications?
- Interactions?
- Conduct?

Incident

- Consent?
- Type of Contact?
- Injuries?

Post Incident

- Behaviors?
- Communications?

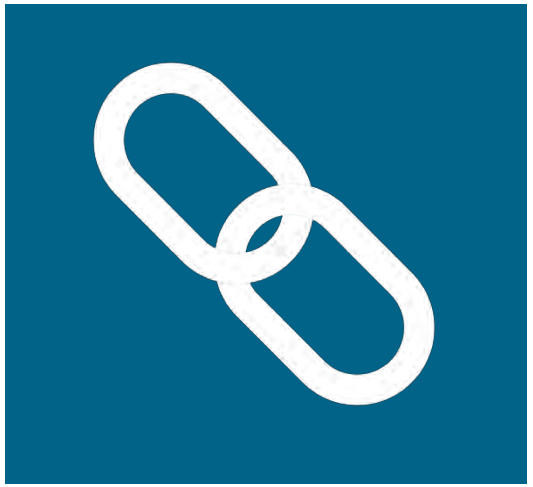
The Importance of Organization



APPROACHES TO QUESTIONING

02

INVESTIGATIVE INTERVIEW OBJECTIVES



Listen

Allow interviewee to share their experience



Evidence Preservation

Text messages

Photographs

Names and contact info for witnesses

Connect

Build rapport

Build trust

Empower



Clarify

Understand what you have heard

Seek additional information



AGENDA PRIOR TO THE INTERVIEW

- Secure an appropriate meeting location
- Allow for enough time to conclude the meeting
- If interviewing a party, inform them of their right to have an advisor present
- Prepare for the meeting
- Provide written notice of the meeting

EXPECTATIONS

What they should expect of you:

- That you are neutral
- That you will listen, what they are saying is important to you
- That you will keep the information they share private
- What you will do with recording/notes
- That you may have to ask difficult questions
- Patience, respect, and appreciation
- This will not be their only opportunity to speak with you
- Prepare the parties for follow up interviews and the "shift"

What you expect of them:

- Honesty
- That they will seek clarity if needed (give them permission to do so)
- That they won't guess or fill in blanks

INVESTIGATIVE INTERVIEWS

1. Start by eliciting a narrative
2. Listen
3. Interview for Clarification
4. Listen
5. Avoid leading or blaming questions, interrogation

START INTERVIEW BY ELICITING A NARRATIVE

- "Help me understand your experience?"
- "What are you able to tell me about your experience?
- "Start where you are comfortable and share what you are able to remember."

Allow the person to speak uninterrupted. This takes patience.

ASK QUESTIONS THAT ARE INTENDED TO CLARIFY AND MORE DEEPLY EXPLORE THE INFORMATION AND DETAILS PROVIDED BY THE PERSON IN THEIR NARRATIVE.

Do Ask:

Interview for clarification

Help me understand?

Can you tell me more about…?

Is there anything else you can share about…?

Avoid

Interrogation

Questions that blame

Questions that imply doubt

Leading questions

THE BEFORE

At some point during the interview, it is also important to explore the prior history, if any, between the complainant and the respondent, and the history of the parties, individually.



AND THE AFTER

It is also important to explore the events following the incident. Oftentimes, the best evidence is produced after the incident.

- The parties' psychological reactions
- Changes in behavior
- Witnesses to the psychological reaction;
  "Has anyone expressed concern about you since the assault?"
- Communication/contact between the complainant and respondent

CAPTURE THE ENTIRE EXPERIENCE

- Ask about the physical and emotional reactions to the incident.
- Conclude with very open-ended questions:
  - What was the most difficult part of this experience for you?
  - Is there something that stands out/that you just can't stop thinking about?
  - Is there anything more that you would like me to know?

THROUGHOUT THE INTERVIEW



Explain questions, especially the difficult ones.

How much did you drink?

What they hear: this is your fault because you were drinking.

Do not ask leading questions.

Watch your tone.

Do not rush.

Listen.

Pay attention to and document information.

Document questions asked.

AT THE CONCLUSION OF THE INTERVIEW

- Discussion submission of evidence.
- Explain statement review process.
- Explain next steps in the process.
- Keep the lines of communication open.
- Review available support, privacy requirements, and prohibition against retaliation.

AFTER THE INTERVIEW: REFLECTION



Reflect.

Is there something you missed or forgot to ask?



Do you need clarity on any of the information shared?



Has this interview revealed additional evidence that you want to explore or collect?



Has evidence of additional policy violations been shared?

FOLLOW UP INTERVIEWS

- Seek Clarification
- Explore Inconsistencies
- Explore contradictions
- Explore difficult issues
- Opportunity to respond

FOLLOW UP INTERVIEW APPROACH

01 Explain the purpose of the follow up

02 Set the stage for the topics you will be covering

03 Prepare the interviewee for “the shift”

04 Do not avoid asking the hard questions

THE "HARD" QUESTIONS

Details about the sexual conduct

Seemingly inconsistent behaviors

Inconsistent evidence/information

What they were wearing

Alcohol or drug consumption

Probing into reports of lack of memory

HOW TO ASK THE HARD QUESTIONS

- Lay a foundation for the questions
  - Explain why you are asking it
  - Share the evidence that you are asking about, or that you are seeking a response to

- Be deliberate and mindful in your questions
  - "Can you tell me what you were thinking when…"
  - "Help me understand what you were feeling when…"
  - "Are you able to tell me more about…"

WHAT QUESTIONS DO YOU HAVE FOR QUINN?

"Casey and I have been friends for a few weeks. On Friday night, we were hanging out alone in my room, watching a movie. We started to make out, and I was ok with that. After making out for a while, Casey started touching me down there. Then Casey tried to have sex with me. He knew that I didn't want to have sex but he kept trying anyway. Casey was being really coercive, and so I just went along with it. Casey raped me and I want him to be held accountable."

WHAT QUESTIONS DO YOU HAVE FOR COLIN?

"Pat and I have been together for about a month and have been intimate for the last two weeks. We went out with my friends on Friday night and Pat got really drunk. At some point we ran into my ex and Pat was really jealous, so we left. When we got back to my place, I thought things were fine. We started hooking up and all of a sudden Pat's mood changed. Pat got really aggressive and choked me. He was so angry and I was so scared."

WHAT QUESTIONS DO YOU HAVE FOR SUSAN?

"When I got to the party, I was already lit. I kept letting Marc get me drinks anyway. At some point, I just kinda don't remember anything. And then I woke up in Marc's bed and it was morning. I had all my clothes on, but I know someone had sex with me. I could feel it. I just wanted to go, so I did. Before I left Marc woke up and tried to talk to me but I wasn't hearing it. He looked guilty and I could tell he felt bad."

HEARING OVERVIEW

03

WHAT IS THE PURPOSE OF A HEARING?



PURPOSE OF THE HEARING

1. Review and Assess Evidence
2. Make Findings of Fact
3. Determine Responsibility/ Findings of Responsibility
4. Determine Sanction and Remedy

THE PARTICIPANTS

The Decision Maker

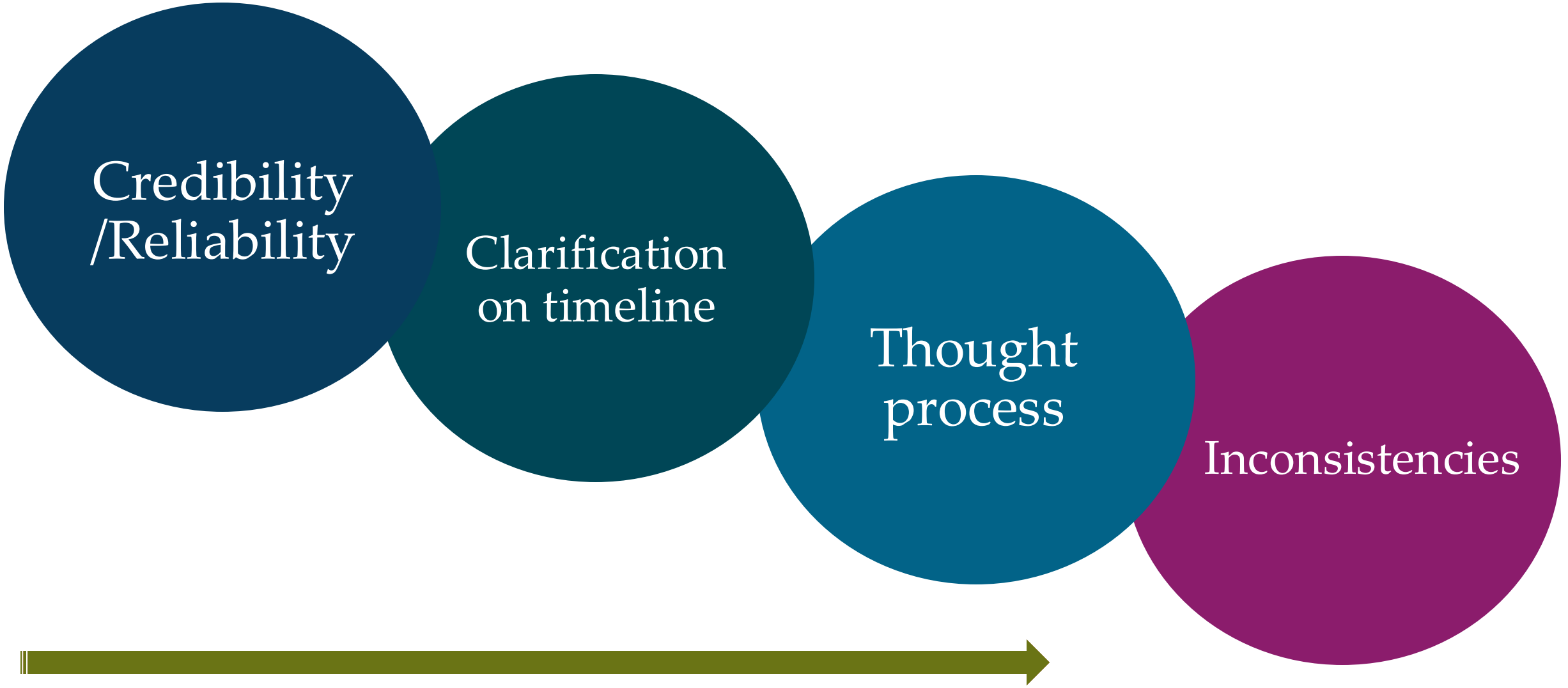


- One person
- Questions the parties and witnesses at the hearing
- Determines responsibility
- Determines sanction, where appropriate
- Answers all procedural questions
- Makes rulings regarding relevancy of evidence, questions posed during cross examination
- Maintains decorum
- Prepares the written deliberation statement

PRE-HEARING TASKS: DEVELOPING QUESTIONS

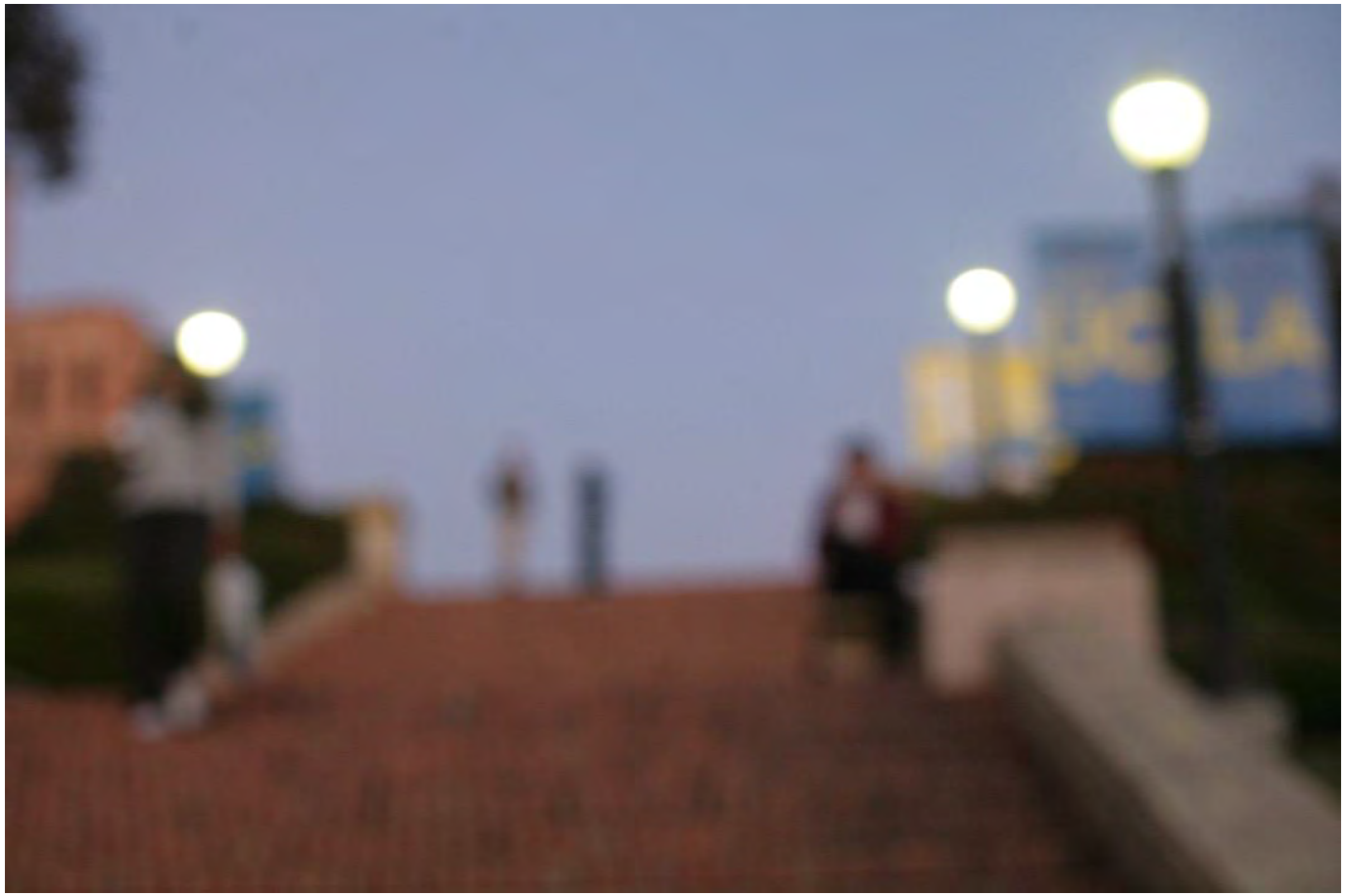
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COMMON AREAS OF EXPLORATION



COMMON AREAS OF WHERE CLARITY OR ADDITIONAL INFORMATION IS NEEDED

- Credibility
- Reliability
- Timeliness
- Inconsistencies
- Details about the alleged misconduct
- Facts related to the elements of the alleged policy violation
- Relevancy of certain items of evidence
- Factual basis for opinions



POLICY ANALYSIS

- Break down the policy into elements
- Organize the facts by the element to which they relate



PRESENTATION OF INFORMATION & QUESTIONING OF THE PARTIES



01. The Hearing Officer will question Complainant first

02. Cross examination of Complainant will occur next

03. Follow up by the Hearing Officer

04. The Hearing Officer will question Respondent second

05. Cross examination of Respondent will occur next

06. Follow up by the Hearing Officer

QUESTIONING OF THE WITNESSES

01

Hearing Officer will determine the order of questioning of witnesses

02

The Hearing Officer will question first

03

Advisor cross-examination will occur next (suggested: Complainant's advisor followed by Respondent's advisor)

04

Follow up by the Hearing Officer



GENERAL QUESTIONING GUIDELINES

FORMAT OF QUESTIONING

The officer or the advisor will remain seated during questioning

Questions will be posed orally

Questions must be relevant

WHEN QUESTIONING….

- Be efficient
- Be prepared to go down a road that you hadn't considered or anticipated exploring.
- Explore areas where additional information or clarity is needed.
- Take your time. Be thoughtful. Take breaks if you need it.
- Listen to the answers.



FOUNDATIONAL QUESTIONS TO ALWAYS CONSIDER ASKING

Were you interviewed?

Did you see the interview notes?

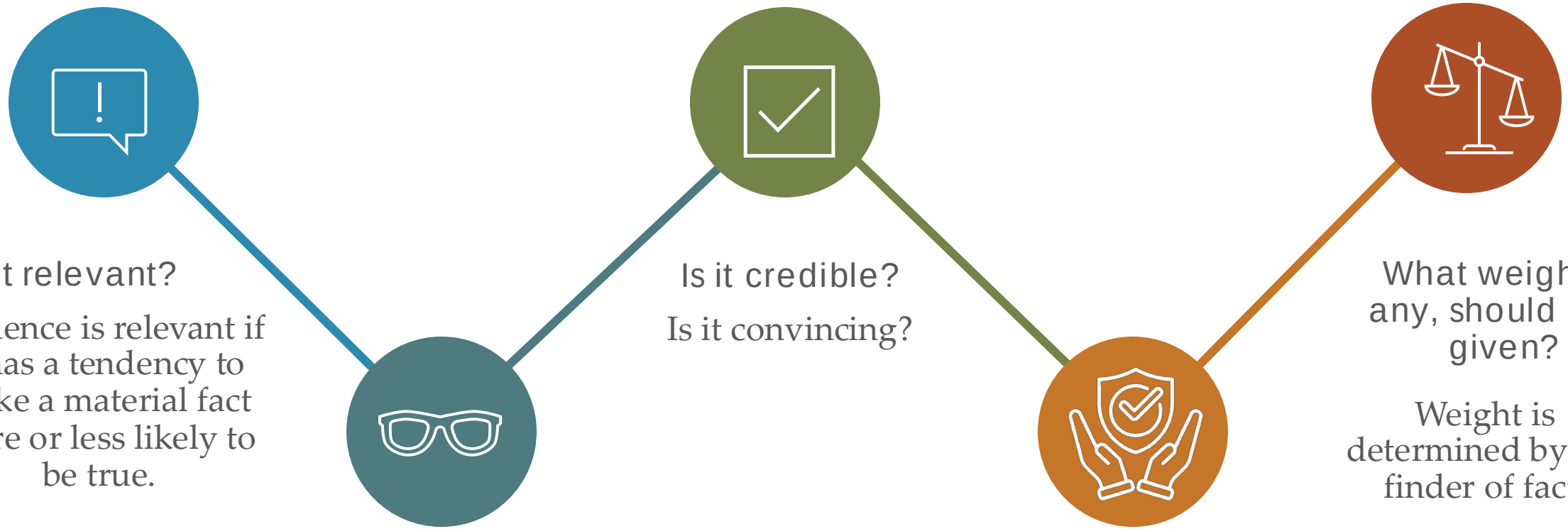
Did the notes reflect your recollection at the time?

As you sit here today, has anything changed?

Did you review your notes before coming to this hearing?

Did you speak with any one about your testimony today prior to this hearing?

EVIDENTIARY CONSIDERATIONS DURING QUESTIONING



Is it relevant?

Evidence is relevant if it has a tendency to make a material fact more or less likely to be true.

Is it authentic?

Is the item what it purports to be?

Is it credible?

Is it convincing?

Is it reliable?

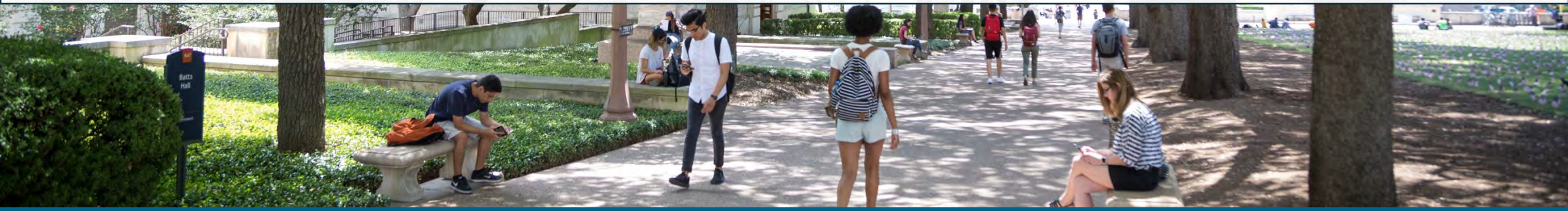
Can you trust it or rely on it?

What weight, if any, should it be given?

Weight is determined by the finder of fact!

WHEN ARE QUESTIONS RELEVANT?

- Logical connection between the evidence and facts at issue
- Assists in coming to the conclusion – it is "of consequence"
- Tends to make a fact more or less probable than it would be without that evidence

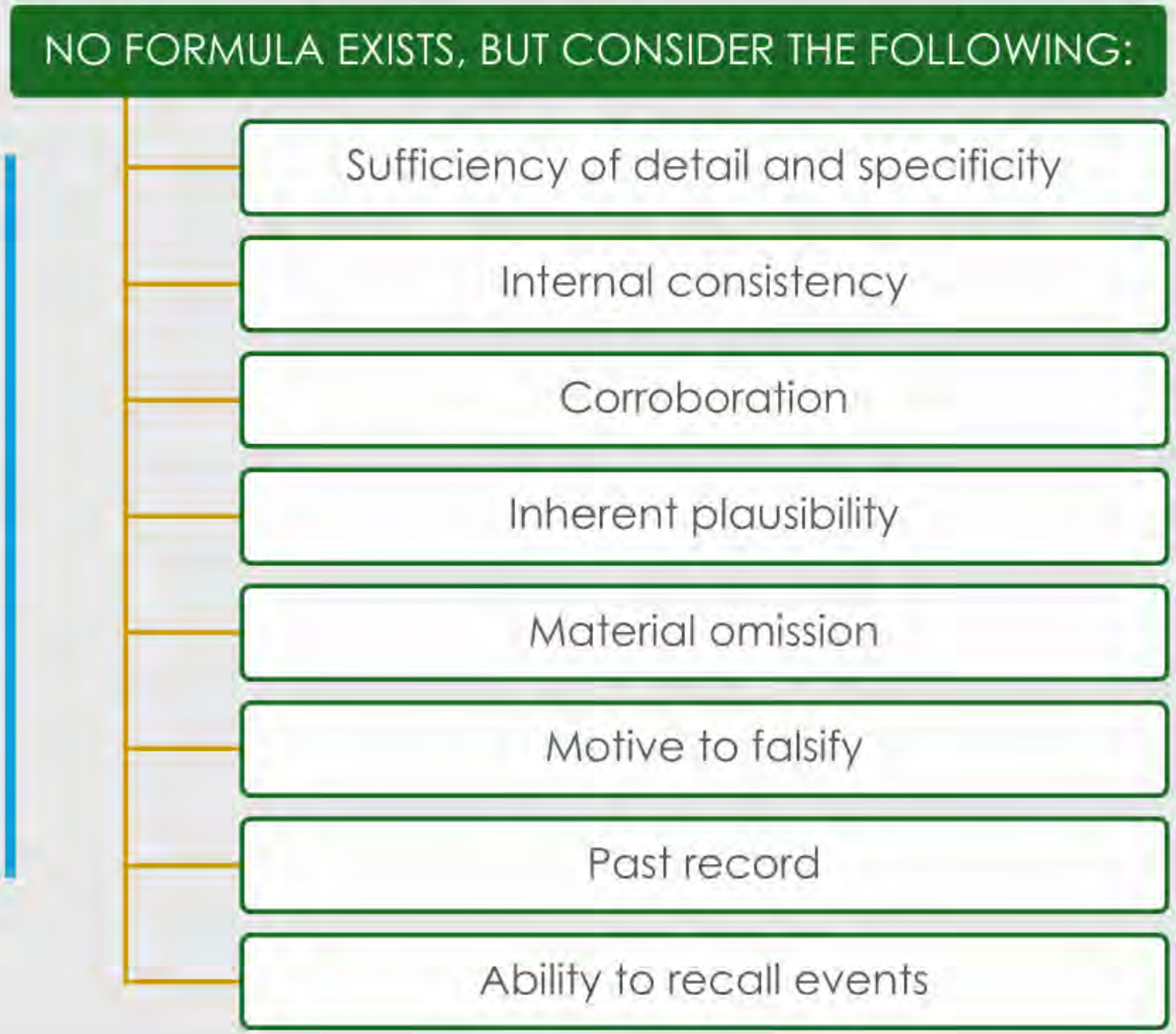


Credibility: The Person is convincing

RELIABILITY: THE PERSON'S STATEMENTS CAN BE TRUSTED



Assessing Credibility and Reliability



CREDIBILITY/RELIABILITY ANALYSIS

STEP BY STEP

1. Determine the material facts based on the notice of allegations
2. Determine which material facts are undisputed and disputed
3. If any material facts are disputed, consider whether a credibility/reliability analysis will help reconcile the dispute

"Jack stated that he never kissed Marcy at the party and went home early, which Marcy denied. Meanwhile, several witnesses corroborated Marcy's statement that he was at the party until 3 a.m. In addition, a witness submitted a photograph showing Jack kissing Marcy at the party. Given that Marcy's statements were corroborated by witness statements and a photograph taken at the party, her statements were found more reliable regarding this material fact."

THE DECISION MAKER'S ROLE IN ADVISOR QUESTIONING

04

CROSS EXAMINATION

WHO DOES IT?

1. Must be conducted by the advisor

2. If party does not appear or does not participate, advisor can appear and cross

3. If party does not have an advisor, institution must provide one at the hearing for the purposes of cross examination only

THE ROLE OF THE DECISION MAKER DURING QUESTIONING BY THE ADVISORS

- After the Advisor poses a question, the proceeding will pause to allow the Chair to consider it.
- Chair will determine whether the question will be permitted, disallowed, or rephrased The Chair may explore arguments regarding relevance with the Advisors.
- The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive.
- The Chair will state their decision on the question for the record and advise the Party/Witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.
- The Chair has final say on all questions and determinations of relevance. The parties and their advisors are not permitted to make objections during the hearing. If they feel that ruling is incorrect, the proper forum to raise that objection is on appeal.

WHEN ASSESSING RELEVANCE, THE DECISION MAKER CAN:

- Ask the person who posed the question why their question is relevant
- Take a break
- Ask their own questions of the party/witness



RELEVANT VS. IRRELEVANT



Logical connection between the evidence and facts at issue



Assists in coming to the conclusion – it is "of consequence"



Tends to make a fact more or less probable than it would be without that evidence

ADVISOR QUESTIONING

05

PREPARING FOR CROSS

- Review and evaluate the evidence
- Identify your narrative, or the version of events that you want to illustrate
- Identify the facts at issue and the findings of fact that you want the decision maker to make
- Plan to highlight the evidence that support the narrative and the findings of fact that you want the decision maker to make
- Prepare an outline of topics to explore



CROSS EXAMINATION

Common Approaches

1. Obtain/Highlight helpful information
2. If a witness does not have information that is helpful, ask questions that illustrate that they are unimportant.
3. Highlight bias/lack of bias
4. Highlight credibility and reliability/lack of credibility or reliability
5. Discounting



QUESTIONING

How to Discount







Confirm

Compare

Conclude

DISCOUNTING EXAMPLE

Statement A:

During her interview with the investigator, Witness Y stated that she overheard Respondent and Complainant fighting inside of Complainant's bedroom. She stated that Complainant came out of the room crying and that their face was red and swollen. She stated that Respondent followed Complainant out of the room "looking angry" and grabbed Complainant by the arm "aggressively" and pulled them back into the room. The fighting then continued.

DISCOUNTING EXAMPLE



Statement B:

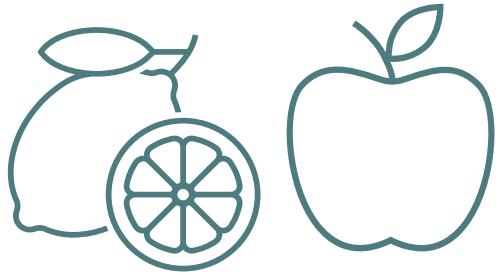
At the hearing, Witness Y tells the decision maker that while she heard loud voices, it might not have been fighting. She also stated that the parties came out of the room together, that Complainant looked upset, that Respondent looked concerned, and that they "calmly" went back in the room together.

CONFIRM



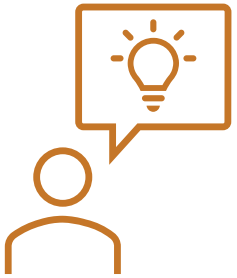
- Witness Y, earlier today you were asked about what you heard and saw on the night in question…
- And you indicated that you heard loud voices, but that you are not sure if it was fighting, is that correct?
- You also said that the parties came out together and then went back into the room, is that what you saw?
- And you are sure of this?

COMPARE



- Witness Y, this isn't the first time you shared your observations of Complainant and Respondent that night, is it?
- Did you talk to the investigator about this?
- And that statement was provided just two days after the incident, correct?
- Do you recall what you said to the investigator?
- Did you tell the investigator the truth when you were interviewed?

CONCLUDE



- Witness Y, when you spoke to the investigator, you indicated that you heard fighting, correct?
- And that Complainant came out of the room crying, isn't that right?
- And that Respondent came out looking angry, correct?
- You also stated that you saw Respondent grab Complainant and drag them back into the room, isn't that true?
- Since speaking with the investigator, you and Complainant have had a falling out, haven't you?

CROSS EXAMINATION:

Do be efficient in your questioning – go event by event

Don't rehash everything a witness has said

Do focus on the information that is helpful

Don't call folks liars or attack them

Do raise concerns about credibility and reliability

Don't rant, rave, lose your temper

Do make your points through pointed and calm questioning

Don't forget to be prepared to pivot as testimony is given

DETERMINATIONS & SANCTIONING

06



Deliberations

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PREPONDERANCE OF THE EVIDENCE

- Standard of proof by which determinations of responsibility are made
- **"More likely than not"**
- It does not mean that an allegation must be found to be 100% true or accurate
- A finding of responsibility =
  - There was sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated
- A finding of not responsible =
  - There was not sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated

WEIGHING THE EVIDENCE & MAKING A DETERMINATION

1. Evaluate the relevant evidence collected to determine what weight, if any, you will afford that item of evidence in your final determination;
2. Apply the standard of proof and the evidence to each element of the alleged policy violation;
3. Make a determination as to whether or not there has been a policy violation.



FINDINGS OF FACT

- A "finding of fact"
  - The decision whether events, actions, or conduct occurred, *or* a piece of evidence is what it purports to be
  - Based on available evidence and information
  - Determined by a preponderance of evidence standard
  - Determined by the fact finder(s)
- For example...
  - Complainant reports that they and Respondent ate ice cream prior to the incident
  - Respondent says that they did not eat ice cream
  - Witness 1 produces a timestamped photo of Respondent eating ice cream
- Next steps?

POLICY ANALYSIS

- Break down the policy into elements
- Organize the facts by the element to which they relate



ALLEGATION: FONDLING

Fondling is the:

- ❑ touching of the private body parts of another person
- ❑ for the purpose of sexual gratification,
- ❑ Forcibly and/or without the consent of the Complainant,
  - ❑ including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

ANALYSIS GRID

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
Undisputed: Complainant and Respondent agree that there was contact between Respondent's hand and Complainant's vagina.	Respondent acknowledges and admits this element in their statement with investigators. *"We were hooking up. Complainant started kissing me and was really into it. It went from there. Complainant guided my hand down her pants…"*	Complainant: drank more than 12 drinks, vomited, no recall Respondent: C was aware and participating Witness 1: observed C vomit Witness 2: C was playing beer pong and could barely stand Witness 3: C was drunk but seemed fine Witness 4: carried C to the basement couch and left her there to sleep it off.

ANALYSIS GRID

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
Undisputed: Complainant and Respondent agree that there was contact between Respondent's hand and Complainant's vagina.	Respondent acknowledges and admits this element in their statement with investigators. *"We were looking up. Complainant started kissing me and was really into it. It went from there. Complainant guided my hand down her pants…"*	Complainant: drank more than 12 drinks, vomited, no recall Respondent: C was aware and participating Witness 1: observed C vomit Witness 2: C was playing beer pong and could barely stand Witness 3: C was drunk but seemed fine Witness 4: carried C to the basement couch and left her there to sleep it off.

DID YOU ALSO **ANALYZE…?**

On campus?

Program or Activity?

In a building owned/controlled by a recognized student organization?

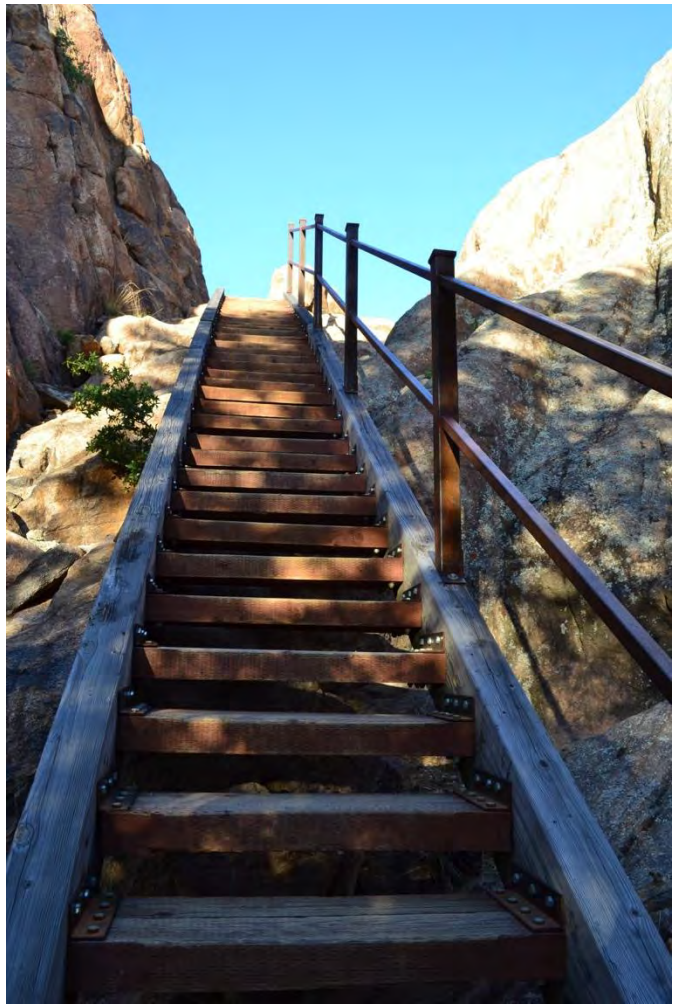
Substantial control over respondent and context?

Complainant was attempting to access program/activity?

GOALS OF SANCTIONS/DISCIPLINE

1. End the harassment
2. Prevent its recurrence
3. Remedy the harm

- What steps would be reasonably calculated to end harassment and prevent recurrence?



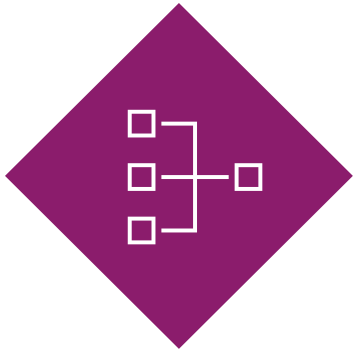
SANCTIONING



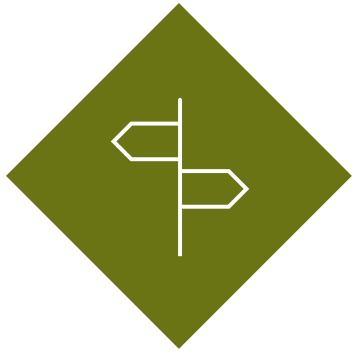
State Law



Learning Environment



System Policy



Measures Available

THE SANCTION DOES NOT UNDO THE FINDING

- No lesser sanction if you disagree with findings
- Sanctioning officer must assume findings are correct

DETERMINING THE PROPER SANCTION

- Consistency
- Foreseeability of repeated conduct
- Past conduct
- Does bias creep in?
- Remorse?
- Victim impact?



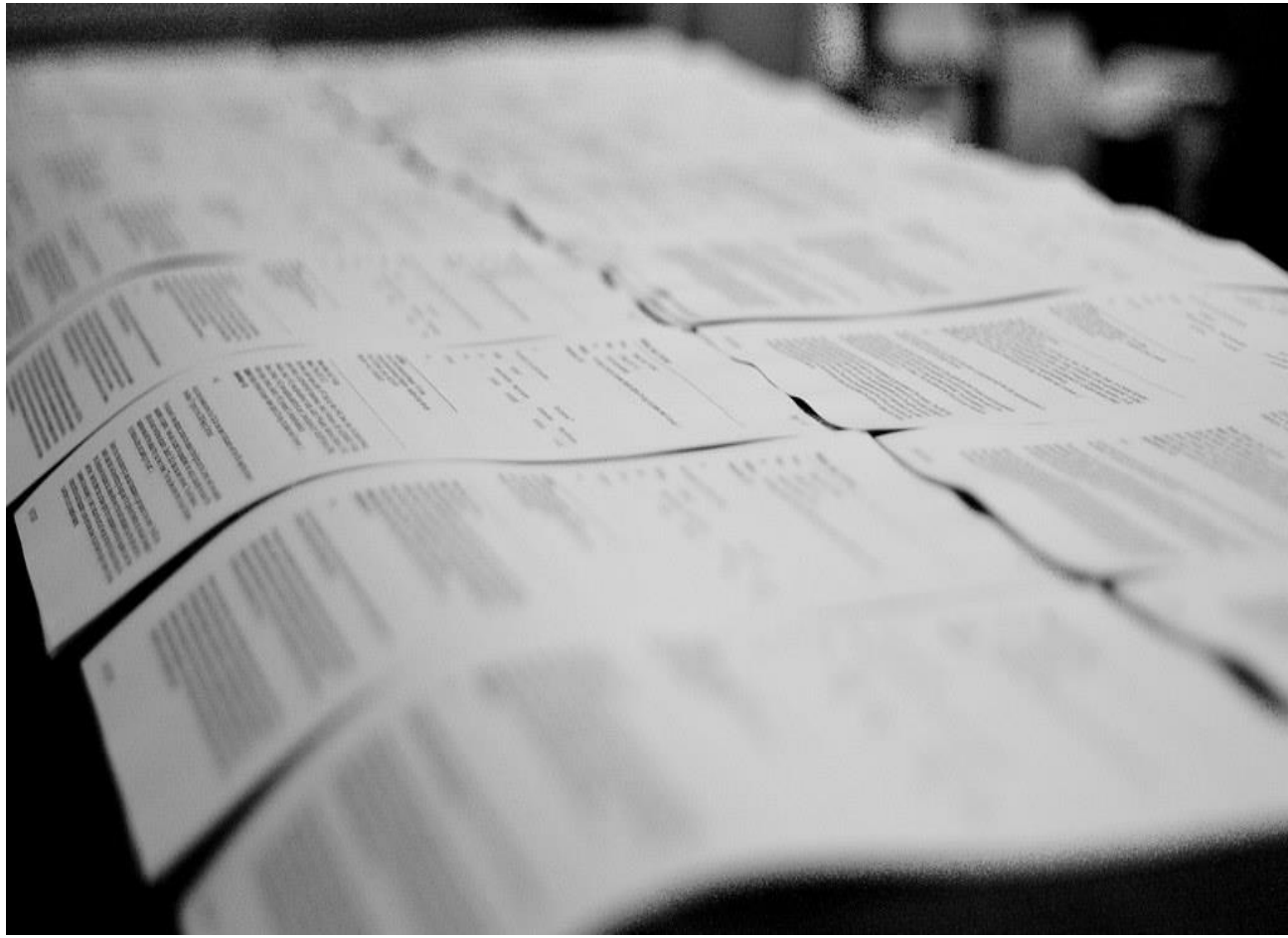
AGGRAVATING CIRCUMSTANCES

- Premeditation
- Predation
- Physical violence
- Repeated violation
- Multiple policy violations in one incident
- Harm to others, impact on complainant and/or community
- Did the behavior continue after intervention?
- Effort to conceal or hide the incident?
- Refusal to attend past trainings
- Past failures to comply with directives



FINAL HEARING REPORT

- The allegations
- Description of all procedural steps
- Findings of fact
- Conclusion of application of facts to the policy
- Rationale for each allegation
- Sanctions and remedies
- Procedure for appeal



THE FINAL DETERMINATION SHOULD STAND ON ITS OWN



S Simple and Easy to Comprehend

T Transparent/Clear

A Accurate

N Neutral/Unbiased

D Draw Attention to Significant Evidence and Issues

ADVISOR'S ROLE POST-HEARING

- May meet with their advisee to review decision and respond to procedural questions.
- Institutionally-appointed advisors typically do not advise nor assist the party in developing an appeal.
- Advisor of choice may assist in advising party whether or not to appeal and in the drafting of an appeal.





APPEALS

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THE RIGHT TO APPEAL?

Both the complainant and respondent have the right to:

- Appeal the same things in the same way to the same person(s);
- Receive information about the appeal process;
- Appeal a sanction;
- Have all aspects of the process be the same for each party;
- Have their appeal reviewed and decided upon;
- Receive notice of the outcome of the appeal.

SANCTIONS AND INTERIM MEASURES DURING APPEAL PROCESS

- Maintaining or changing interim measures during the process
- Communicating and documenting sanctions and interim measures
- Deciding whether to impose sanctions during the process
    - Pros and Cons



DIFFERENCES IN RESPONSIBILITY

RESOLUTIONS

- Investigate, Hearing
- Determine What Happened
  - Findings of Fact
  - Findings of Policy

SANCTION

APPEAL

- Review the Appeal
- Determine Whether Grounds for Appeal Have Been Met
- Make Decision Regarding Merits of Appeal

DIFFERENCES IN BURDEN

COLLEGE/
UNIVERSITY

→ Error correction

COMPLAINANT
RESPONDENT

→ Persuade and point out error with supporting evidence or facts

HAS THE BURDEN BEEN MET?

Review the information provided by Complainant and/or Respondent and determine whether it contains sufficient information concerning the grounds for appeal and the reasons related to those grounds

This step is not to decide the merits of the appeal, but to identify the nature and scope of the issues to be addressed.

IN THEIR APPEAL, RESPONDENT WRITES:

- I have new evidence not previously available to me. Having read the hearing officer's report, I now know the hearing officer was biased (new evidence) because the hearing officer found against me, and there is no way that any unbiased hearing officer would have properly weighed the evidence and come to any conclusion other than the fact that complainant was lying.
- The hearing officer failed to call 1 key witness. The Title IX coordinator should have been questioned, and she could have explained that Complainant was given a free pass and allowed to drop out of organic chem after it was obvious Complainant was going to fail. This would have proven that Complainant made up the complaint and filed only to avoid failing a difficult class.

WHAT DOES THIS MEAN?

- You are reviewing the appeal for what it says, not how it is said.

- You are identifying what the party says went wrong in the process or whether the party has identified new information and IF the party has articulated that what went wrong or what is new, if true, would have led to a different outcome.



PROCEDURAL ERROR

There was a procedural error in the process that materially affected the outcome.

- Someone was not interviewed
- I was not allowed to cross-examine the complainant
- Burden was put onto me to prove consent

COMMON CHALLENGES

Non-Participating Parties

- Bias/conflict of interest
- Error

Uncooperative Witnesses

Uncooperative Advisors

DENIAL OF A PROCESS YOU DON'T OFFER

- Cross examination
- Representation
- Discovery
- Subpoena / compel witnesses

WHEN A RESPONDENT REFUSES TO PARTICIPATE IN THE PROCESS BUT CLAIMS DUE PROCESS IS VIOLATED

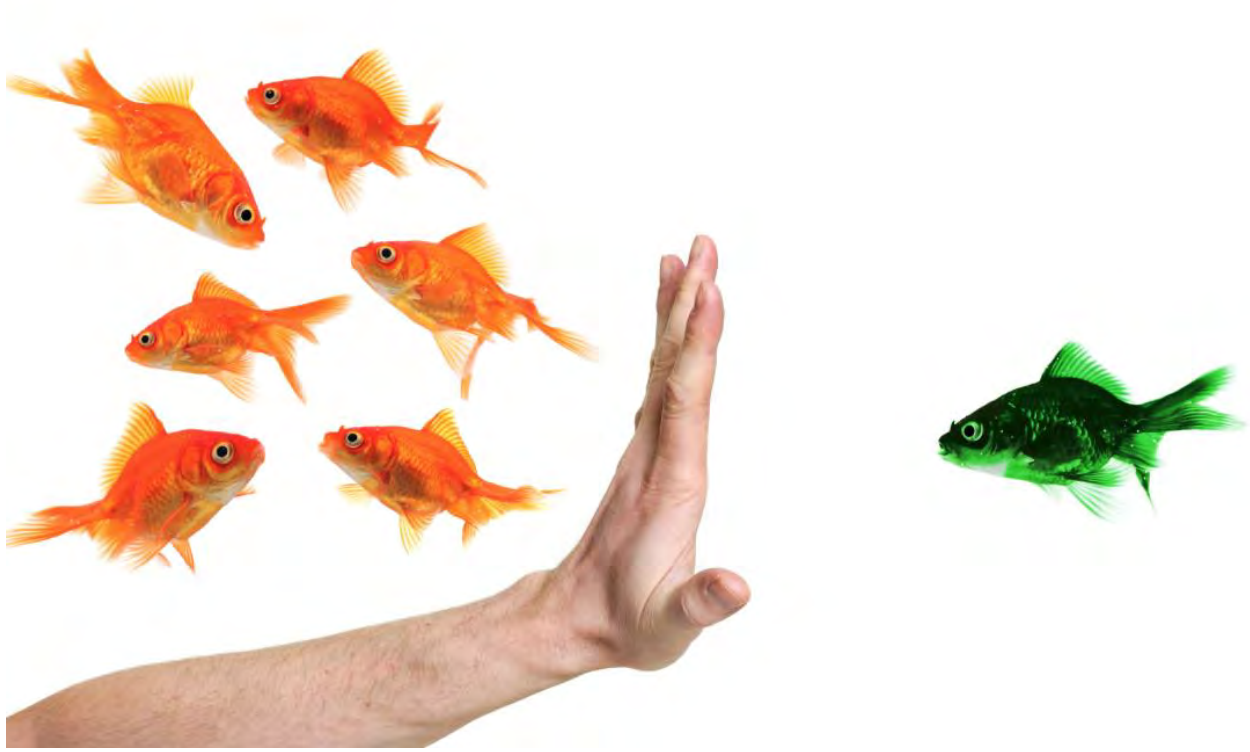
"The Plaintiff waived his right to challenge the process resulting in his expulsion by failing to participate in the process afforded him."

- Herrell v. Benson



BIAS

- What constitutes bias?
- The investigator was biased against me because...
- The investigator was biased against (complainants/respondents generally) because . . .



ALLEGATIONS FOR BIAS

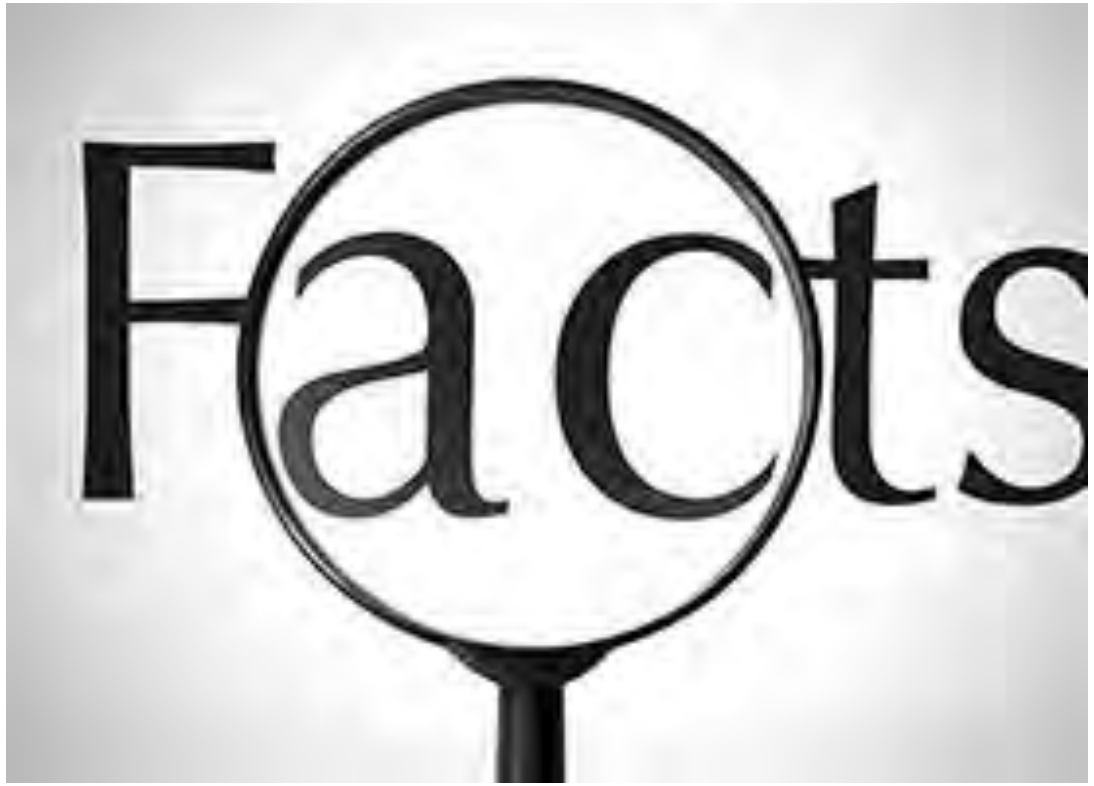
"Pro-victim bias does not equate to anti-male bias."
-Doe v. University of Colorado

Anti-violence bias does not equate to anti-male bias.

ALLEGATIONS OF BIAS AS THE BASIS FOR APPEAL

An allegation of bias without factual support "no longer passes muster".

-Doe v. University of Colorado



NEW INFORMATION

- Is it really new?
- If it is new, would it change the findings/outcome
- Who investigates new information?



COMMON ERRORS

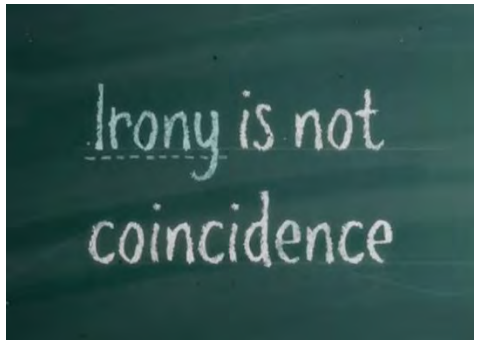
SOMETIMES INSTITUTIONS DO THE WRONG THING

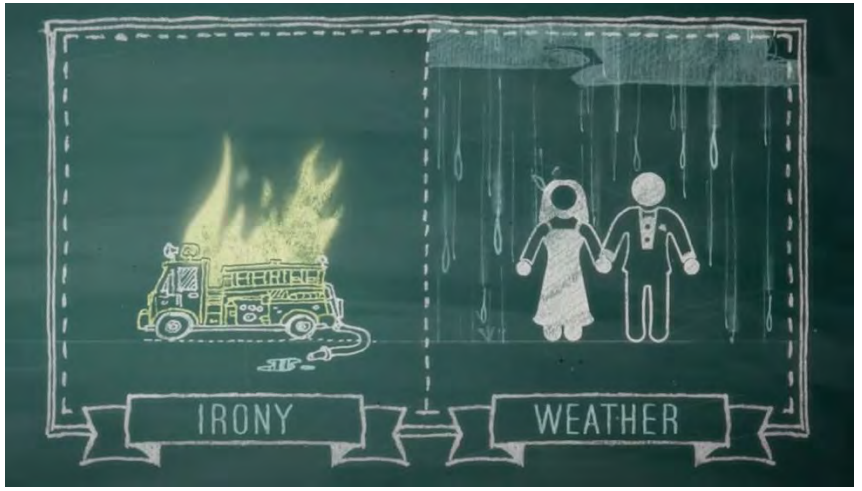


- Missing deadlines for providing materials
- Misunderstanding of consent or incapacitation
- Errors at a hearing

EVIDENCE – KNOWING WHAT TO CONSIDER

- Drunk vs. Intoxicated vs. Incapacitated
  - Language matters
  - Clarity and consistency of application
- Who has to prove consent?
- Know the language of your policy





Courtesy Weird Al's *Word Crimes*

CROSS COMPLAINTS



- Was it handled?
- How was it handled?
- When raised for first time in the appeal, what is your process?
- Who handles?

APPEALS PANELS THAT EXCEED THEIR AUTHORITY

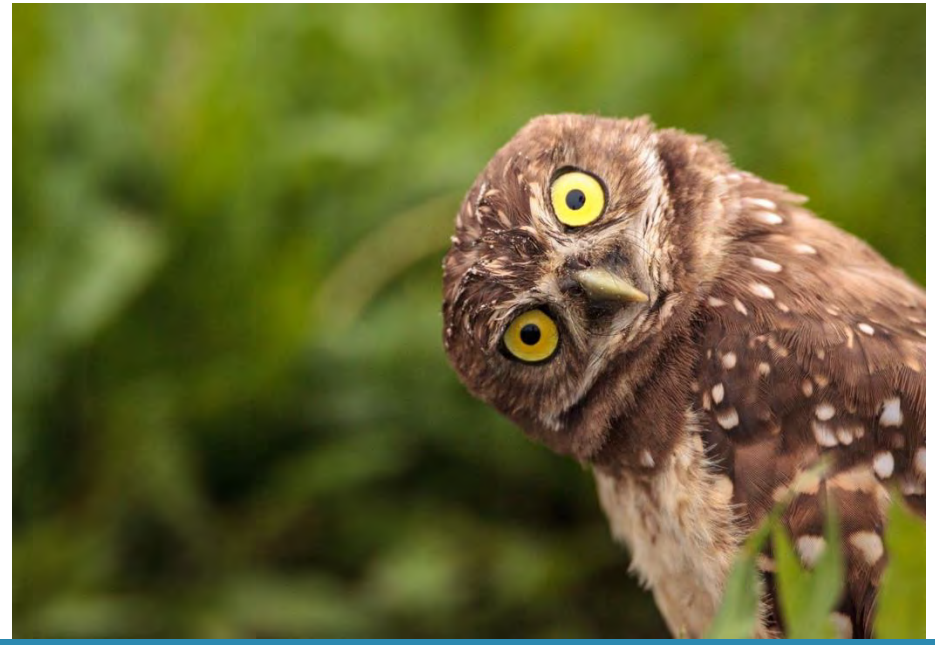


- Stay In Your Lane
- How Do You Know
- How To Correct

SANCTIONS ARE NOW WRONG BECAUSE FINDING WAS WRONG

Does appeals officer determine new sanction, or send case back for appropriate determinations?





HOW MUCH INFORMATION TO PROVIDE ON APPEAL?

The appellate officer's failure to plainly articulate why he granted the appeal, which resulted in a new hearing that found the respondent in violation, was "perplexing" to the reviewing court, along with the appellate officer's ad hoc decision to request an independent Title IX opinion prepared in the course of determining the appeal.

APPELLATE OFFICER/PANEL MAY NOT…



Substitute their own findings for the findings of the decision maker



Engage in fact-finding/weigh new evidence



Correct procedural errors on their own

QUESTIONS?





FROM POLICY TO PRACTICE

Implementing the Stop Campus Hazing Act (SCHA)

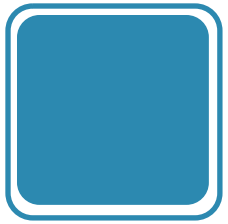
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HAZING 101

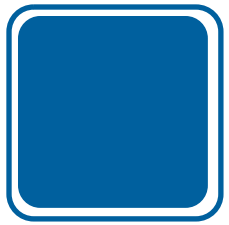
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COMPONENTS OF HAZING

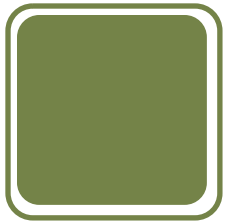
"Any activity expected of someone joining or participating in a group that humiliates, degrades, abuses, or endangers them, **regardless of a person's willingness to participate**."



Group Context/ Joining



Humiliating, Degrading, or Dangerous Behavior



Regardless of Willingness to Participate

THE SPECTRUM OF HAZING



INTIMIDATION

- Deception
- Assignment of demerits
- Silence periods with implied threats for violation
- Social isolation of new members
- Use of demeaning names
- Expecting certain items to always be in one's possession

HARASSMENT

- Verbal abuse
- Threats or implied threats
- Asking new members to wear embarrassing attire
- Skits with degrading or humiliating acts
- Sleep deprivation
- Sexual simulations

VIOLENCE

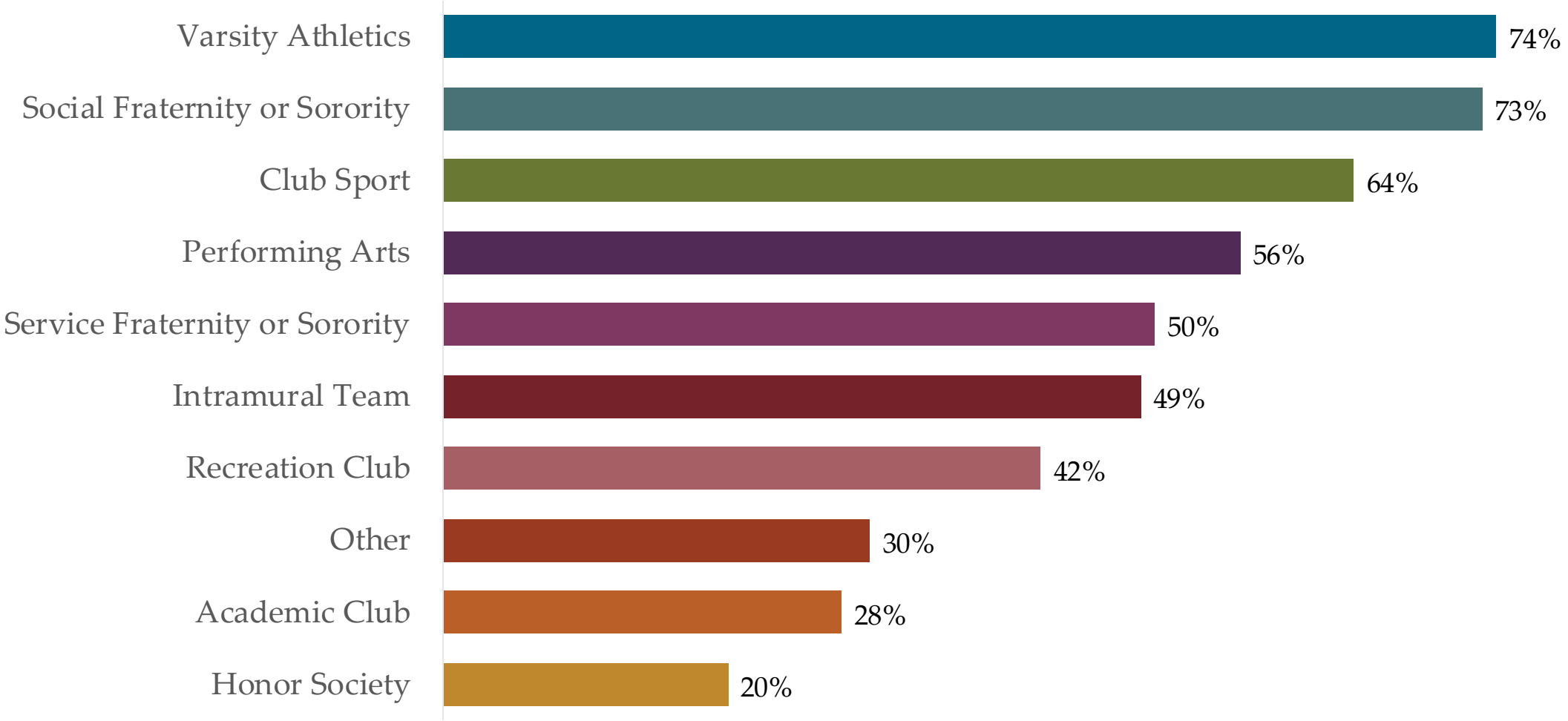
- Forced alcohol or drug consumption
- Beating, paddling, or other forms of physical assault
- Branding
- Forced ingestion of vile substances
- Water intoxication
- Abduction / kidnapping
- Sexual assault



Allan, 2005; Allan & Kerschner, 2020; Adapted from Bringing in the Bystander

HAZING PREVALENCE BY TYPE OF ORGANIZATION

HAZING PREVALENCE BY ORGANIZATION TYPE



From National Study of Student Hazing, Allan/Madden

REGARDLESS OF WILLINGNESS TO PARTICIPATE

When participation is required for belonging and acceptance, is it voluntary?

Consent: A clear and freely-given yes

Barriers to consent

- Power imbalance
- Coercion
- Peer pressure
- Need for belonging
- Fear
- Lack of meaningful alternatives

IMPACT

71%

of those who are hazed suffer negative consequences

- Stress, frustration, anger, or emotional instability
- Sleep deprivation
- Disempowerment
- Decline in academic success
- Impact on relationships with friends, significant others, and family
- Post-traumatic stress syndrome
- Loss of respect for and interest in being part of the organization
- Erosion of trust within the group
- Illness, injury, hospitalization, or death

Adapted from The Hazing Prevention Network

WHAT'S THE HARM?

Perceived Negative Results of Hazing	
Feel stressed	11%
Have problems in relationships	8%
Feel guilty	4%
Have difficulty sleeping	4%
Have trouble with academics	4%
Feel humiliated or degraded	3%
Feel depressed	3%
Quit the team or organization	3%
Incur physical injuries	3%
Feel in danger	2%
Consider transferring	2%
Suicidal ideation	1%

National Study of Student Hazing, Allan/Madden

- These numbers might be small, but they're **BIG** impacts
- Is the goal to harm *only a small number* of members? Or is the goal to harm *zero* members?
- Trauma is subjective
  - Previous trauma
  - Social and cultural identities
  - Mental health
  - Additional stress factors
- Just because you went through it and it made you stronger doesn't mean that will be the case for everyone

MEANINGFUL PREVENTION

Going Upstream

02

GRAND RIVER | SOLUTIONS

THE SCHA SAYS...

- **Required prevention and awareness programs must be:**
  - Research-informed
  - Campus-wide
  - Reach students, faculty, and staff
- **They must include:**
  - Current institutional policies related to hazing
  - How to report hazing
  - The process for investigating hazing
  - Information on applicable laws
- **Programs must also include primary prevention strategies intended to stop hazing before it occurs, such as:**
  - Skill building for bystander intervention
  - Information about ethical leadership
  - Promotion of strategies for building group cohesion without hazing

PREVENTION TYPES

Primary Prevention → Changing the social/cultural context so that the harm never happens in the first place

Secondary Prevention → Assuming harmful actions will take place, reduce their negative impact

PREVENTION TYPES

Primary Prevention	Secondary Prevention	Tertiary Prevention
Strategies to change the social/cultural context to prevent behavior from occurring.	Response strategy after behavior has occurred to address short-term consequences.	Preventing the worst-case outcome.

GREAT. SO, WHAT DOES THAT MEAN FOR HAZING?

Ask yourself—does this stop hazing from ever happening?

Primary Prevention Programs:

- Social norm campaigns promoting positive norms
- Healthy bonding skills
- Questioning traditions
- Bystander intervention
- Managing alumni relationships and pressures

WHAT DOES THAT MEAN FOR HAZING? PART 2

Ask yourself—does this interrupt hazing or provide resources or consequences?

Secondary/Tertiary Prevention Programs:

- Promoting reporting
- Removing barriers to reporting
- Consistent and clear accountability procedures
- Bystander intervention
- New member education
- Universal first-year education

AWARENESS- WHO CAN MAKE AN IMPACT?

- **95%** of students who identified their experience as hazing did not report to the institution, ***BUT...***
- **25%** of hazing activities happened in a public place on campus
- **25%** believed coaches or advisors were aware of the behavior
- **48%** told a friend or peer

So...

- Those adjacent to the behavior need to be able to identify hazing, believe it is unacceptable, and know how to report
- Friends, roommates, advisors, orgs against hazing may all be more likely to witness and report behavior if they have the knowledge and skills

WHAT ABOUT BYSTANDER INTERVENTION?

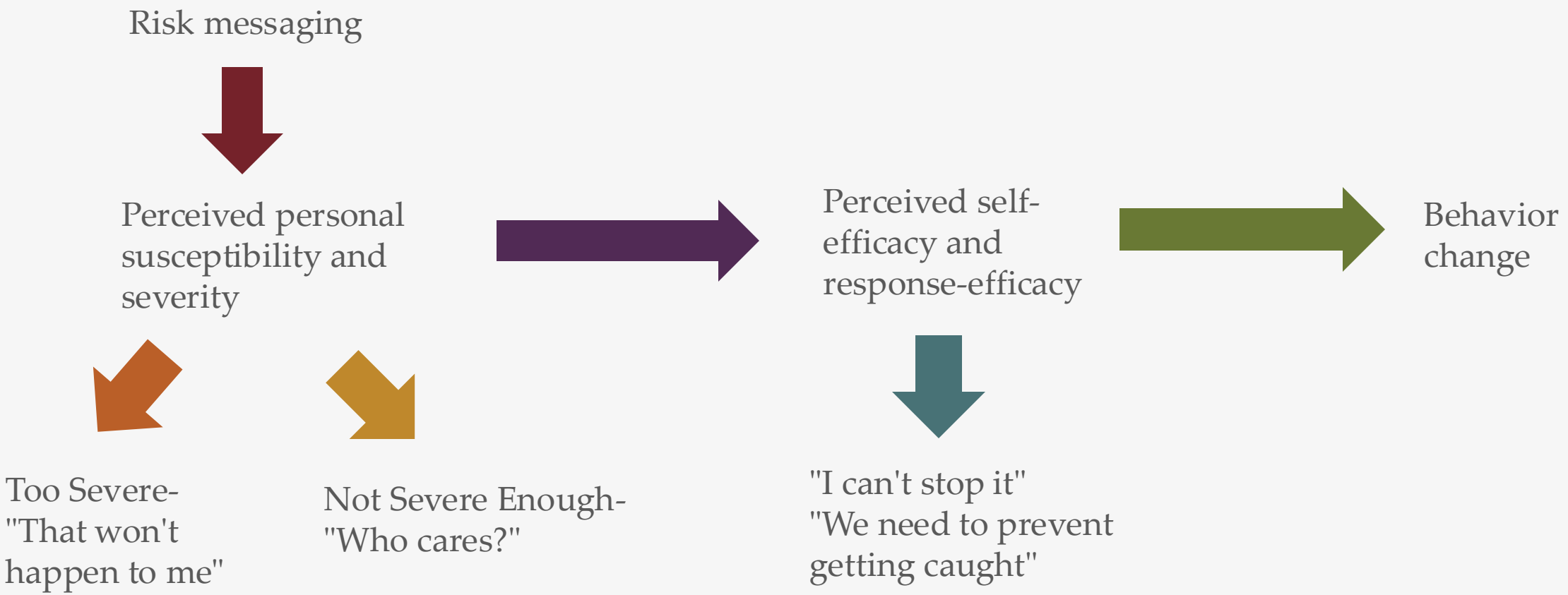
Bystander Intervention can be both primary and secondary prevention

- **Secondary prevention:** Intervening in the moment to stop harm
- **Primary prevention:** Creating a culture where hazing isn't tolerated, and those who would haze don't because they know someone will stop them

WE KNOW SCARE TACTICS DON'T WORK.

- Consider public health campaigns from when you were growing up. What was the messaging?
- How are public health campaigns communicated now?

EXTENDED PARALLEL PROCESS MODEL



SCHA AS PART OF THE CLERY ACT

- The Clery Act cares about certain things…we care about more (and bigger) things
  - Geography
  - Crime identifying and counting
  - The VAWA Amendments and Our Response
  - SCHA Amendments and Our Response
  - Year Round Clery Act Obligations

  - **Safety!**

REPORTABLE PART I CRIMES (POST VAWA)

SOMETIMES CALLED PRIMARY CRIMES OR CLASSIS CLERY

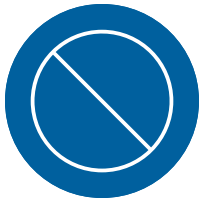
- Criminal homicide
  - Murder and non-negligent manslaughter
  - Negligent Manslaughter/Manslaughter by Negligence
- Sex offenses
  - Rape
  - Fondling
  - Incest
  - Statutory rape
- Robbery
- Aggravated assault
- Burglary
- Motor vehicle theft
- Arson

PART II ARRESTS/REFERRALS FOR DISCIPLINE

Use:

Local definitions:

Must be an actual violation of state/local law



Illegal Weapons Possession



Drug Law



Liquor Law

PART III
HATE CRIME REPORTING

All Part I crimes, plus four Hate Crimes counted as hate crimes if motivated by bias and recorded by category of bias.

1. Larceny-theft
2. Simple assault
3. Intimidation
4. Destruction, damage, or vandalism of property

CATEGORIES OF BIAS

Only count if it fits these groups.

The categories of bias were initiated in HEOA and changed by VAWA.

Race (2008 HEOA)

Gender (2008 HEOA)

Religion (2008 HEOA)

Sexual Orientation (2008 HEOA)

Ethnicity (2008) & National Origin (2011 Handbook)

Disability (2008 HEOA)

Gender Identity (2013 VAWA)

National Origin (2013 VAWA)

PART IV
VAWA CRIME REPORTING

1. Domestic Violence
2. Dating Violence
3. Stalking

And updated sexual assault

VAWA REPORTABLE INCIDENTS

Dating Violence

The term dating violence means "violence committed by a person—

A. who is or has been in a social relationship of a romantic or intimate nature with the victim;
B. the existence of such a relationship shall be determined based on the reporting party's statement and with consideration of:
    I. The length of the relationship;
    II. The type of relationship; and
    III. The frequency of interaction between the persons involved in the relationship"

VAWA REPORTABLE INCIDENTS

Domestic Violence (Regulations, Appendix A)

The term domestic violence is a "felony or misdemeanor crimes of violence committed

A. by a current or former spouse of the victim,
B. by a person with whom the victim shares a child in common,
C. by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner,
D. by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the violence occurred, or
E. by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

SEXUAL ASSAULT

"An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program and included in Appendix A of this subpart."

VAWA REPORTABLE INCIDENTS

STALKING

- The term stalking means "engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
  A. fear for the person's safety or the safety of others; or
  B. suffer substantial emotional distress.

AND COMING IN 2026, OR MAYBE 2027…

HAZING DEFINED AND ADDED (LIKELY PART V)

- Need not be a crime
- Clery geography or (maybe) not

Hazing is defined as:

1. "An intentional, knowing, or reckless act
2. committed by a person, whether individually or in concert with other persons,
3. against a person, regardless of that person's willingness to participate, that—
4. was committed in connection with an initiation into, an affiliation with, or the maintenance of membership in a student organization (such as a club, society, association, athletic team, fraternity, sorority, or student government); and

HAZING DEFINED AND ADDED (LIKELY **PART V) (CONT'D)**

- Need not be a crime
- Clery geography or (maybe) not

5. Causes or is likely to contribute to a substantial risk of physical or psychological injury beyond reasonable risk of participation in the institution of higher education or the organization

a. whipping, beating, striking, electronic shocking, placing of a harmful substance on someone's body, or similar activity;

b. causing, coercing, or otherwise inducing:

    a. sleep deprivation, exposure to the elements, confinement in a small space, extreme calisthenics, or other similar activity;

    b. Consumption of food, liquid, alcohol, drugs, or other substances;

    c. sexual acts;

c. Inducing reasonable fear of bodily harm through the use of threatening words or conduct;

d. activity against another person that includes a criminal violation of local, state, tribal, or federal law; and

e. activity that induces, causes, or requires another person to perform a duty or task that involves a criminal violation of local, state, tribal, or federal law."

POLICY BEST PRACTICE

10

SCHA POLICY REQUIREMENTS

1. Reporting Options
2. Investigation Procedures
3. Hearing Procedures
4. Education and Prevention



SCHA: POLICIES AND ASR POLICY STATEMENTS

- Statement of current policies
- How to report hazing
- Investigation process
- Relevant information on local/state/tribal hazing laws



SCHA: POLICIES AND ASR POLICY STATEMENTS

- When making policies…

POLICY CONSIDERATIONS
Expanded Definitions

Student Organization – an organization at an institution of higher education (such as a club, society, association, varsity or junior varsity athletic team, club sports team, fraternity, sorority, band, or student government) in which two or more of the members are students enrolled at the institution of higher education, whether or not the organization is established or recognized by the institution.

Suggested Definitions:

Established: a group created by the institution, which is in existence but does not have to register as a student organization (including but not limited to athletic teams, musical or theatrical ensembles, and academic or administrative units).

Recognized: an organization that consists of a number of persons who are associated with each other (two or more of whom are enrolled students) and have registered with the institution as a student organization (such as clubs, club sports, or fraternities and sororities

Unrecognized: a club or organization that consists of a number of persons who are associated with each other (two or more of whom are enrolled students) and have not registered, have not had their registration approved, or have had their registration or recognition removed.

POLICY & PROCESS VS. SOPS

Policy & Process

- Covered conduct
- Definitions
- Rights of parties
- Process for review and adjudication
- Potential outcomes

Public Facing

Standard Operating Procedures

- Breaking down processes into steps
- Determining ownership of process components
- Ensuring consistency of review and resolution

Internal Use

GEOGRAPHY

Clery

Does not require you to report crimes based on **WHO**, but **WHERE**

SCHA

Expands **WHERE** beyond Clery

VAWA

Response is different

LOCATION, LOCATION, LOCATION

Four Geographic Locations

1. On Campus
2. On Campus Residential
3. Public Property (adjacent to AND accessible from)
4. Non-Campus

SCHA CHTR LOCATION CONSIDERATIONS

- Campus Hazing Transparency Reports (CHTR) are not (we think) bound by **geography**

- Defined hazing, *wherever*, by **established** or **recognized organizations**

CAMPUS HAZING TRANSPARENCY REPORT

(F) For purposes of this paragraph, the definition of 'campus' under paragraph (6)(A)(ii) shall not apply.

SCHA: STUDENT ORGANIZATION DEFINED

- When relevant (CHTR), when not relevant (ASR)
- Relationship to institution
  - Established
  - Recognized

Student organization is defined as:
"an organization at an institution of higher education (such as a club, society, association, varsity or junior varsity athletic team, club sports team, fraternity, sorority, band, or student government) in which two or more of the members are students enrolled at the institution of higher education, whether or not the organization is established or recognized by the institution."



SCHA: ASR V. CHTR

	Annual Security Report	Campus Hazing Transparency Report
Clery Geography	Include if in Clery Geography	We believe not relevant (definition of Campus does not apply)
Status of Org. as Recognized or Established	Not dispositive for ASR	CHTR *only* required for recognized or established organizations

ANNUAL AND ONGOING REQUIREMENTS

05

WE HAVE TO DO WHAT....WHEN?

- Policy Development and Revision
- Annual Security Report and Crime Reporting
- Campus Hazing Transparency Report
- Other?
    - State Law requirements



CAMPUS HAZING TRANSPARENCY REPORT

Plain language reading, but…

(A) Each institution …shall develop…a report…summarizing findings concerning any student organization (except that this shall only apply to student organizations that are established or recognized by the institution) found to be in violation of an institution's standards of conduct relating to hazing, as defined by the institution, (hereinafter referred to in this paragraph as a 'hazing violation') that requires the institution to—
(i) beginning July 1, 2025, collect information with respect to hazing incidents at the institution;
(ii) not later than 12 months after the date of the enactment of the Stop Campus Hazing Act, make the Campus Hazing Transparency Report publicly available on the public website of the institution; and
(iii) not less frequently than 2 times each year, update the Campus Hazing Transparency Report to include, for the period beginning on the date on which the Report was last published and ending on the date on which such update is submitted, each incident involving a student organization for which a finding of responsibility is issued relating to a hazing violation, including—



*** (name of org., dates, info and description of the violation)

CAMPUS HAZING TRANSPARENCY REPORT (2)

(B) The Campus Hazing Transparency Report may include—

(i) …information that—(I) is included as part of a report published by the institution; and (II) meets the requirements of the Campus Hazing Transparency Report; and (ii) any additional information— (I) determined by the institution to be necessary; or (II) reported as required by State law.

(C) No PII



OVERLAPS AND INCONSISTENCIES

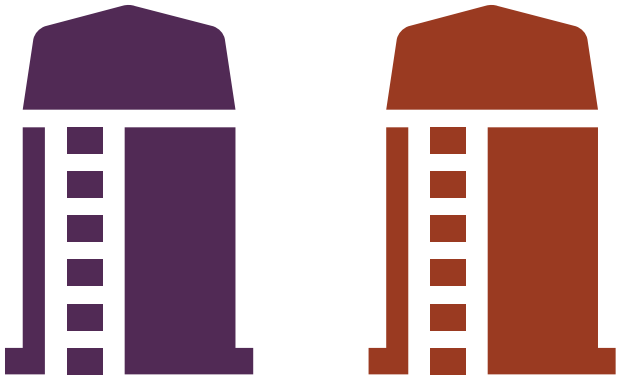
Title VI, Title VII, Title IX, Clery Act crimes, and state law

RELEVANT OFFICES AND ROLES

07

THE OVERLAPS: KEY CONSIDERATIONS

- Who is issue spotting?
- What offices have jurisdiction (and are they siloed)?
- Which policy/process "goes first?"
- How are distinction in the process being explained, and who explains them?
- Are sanctions held in abeyance pending the other process finding? Are sanctions considered in the sanction for latter processes?
- Where and how are records maintained and for how long?



DON'T WORRY, ED IS ISSUING GUIDANCE

Someday, but probably not today.

LET'S PLAY

Clear Up The Haze!



LET'S PLAY

Clear Up The Haze!

"The nation's fastest growing game show specific to higher education and compliance with the Stop Campus Hazing Act and related laws and created by Joe Storch in 2025"

-Nonexistent Game Show Magazine



CLEAR UP THE HAZE

Meet your hosts!





CLEAR UP THE HAZE



We need three volunteers!



Question 1:

Three friends get together to form a Bowling Appreciation Club. They think that the Student Affairs registration process is boring, and don't go through it. When 2 students ask to hang out and bowl with them, they make the 2 students run 3 miles through the campus lane holding bowling balls. The Dean of Students sees this while out on a perambulation.



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What goes in the ASR?



Question 2:

The Dean charges the Bowling Appreciation Club with Hazing. They are found responsible on the first strike and all 3 are dismissed, sparing none of them.



Question 2:

The Dean charges the Bowling Appreciation Club with Hazing. They are found responsible on the first strike and all 3 are dismissed, sparing none of them.

What goes in the CHTR?



Question 3:

Over the summer, the new leaders of the Bowling Appreciation Club register as The Kingpins. They still love to bowl. This semester, they make the 4 students run 6 miles through the local state park holding bowling balls in each hand. The Dean of Students sees this while out on a leisurely stroll.



Question 3:

Over the summer, the new leaders of the Bowling Appreciation Club register as The Kingpins. They still love to bowl. This semester, they make the 4 students run 6 miles through the local state park holding bowling balls in each hand. The Dean of Students sees this while out on a leisurely stroll.

What goes in the ASR?



Question 4:

The Dean charges The Kingpins with hazing. After a long process, where the club leaders say they were framed, the decision is split; the organization is found not responsible, but it's pinned on the individual leaders who are found responsible.



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What goes in the CHTR?



Question 5:

Just kidding: The Dean charges The Kingpins with hazing and the organization is found responsible, but the individual leaders are found not responsible.



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Just kidding: The Dean charges The Kingpins with hazing and the organization is found responsible, but the individual leaders are found not responsible.

What goes in the CHTR?



Question 6:

New leadership of The Kingpins pledge to return to a fresh set and a clean sheet. With the new bowling alley in the campus Union, the new members are bowling morning, noon, and night. The Dean notices this while out on a ramble and accuses them of hazing, saying this is their 3rd strike (as a Turkey flies by)!



Question 6:

New leadership of The Kingpins pledge to return to a fresh set and a clean sheet. With the new bowling alley in the campus Union, the new members are bowling morning, noon, and night. The Dean notices this while out on a ramble and accuses them of hazing, saying this is their 3rd strike (as a Turkey flies by)!

What goes in the ASR?



Question 7:

Though they claim they were perfect, The Kingpins organization is found responsible for breaking and entering, since they used a stolen key to access the Union bowling alley. It's foul and a wash out and The Kingpins get the hook, never to return.



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What goes in the CHTR?



Bonus:

Why do driving movies with famed Texan Matthew McConaughy never feature left turns?

Thanks for playing!



FRIDAY NIGHT LIGHTS (STOP CAMPUS HAZING ACT VERSION)

COMPLIANT POLICIES,
MEANINGFUL PREVENTION,
CAN'T LOSE

GRAND RIVER | SOLUTIONS

QUESTION TIME

SCHA Full Analysis

Analysis (Ettell Irvine, Stagg, Storch)

Redlined Excerpt of 20 U.S.C. 1092(f) as amended by the Stop Campus Hazing Act



GRAND RIVER | SOLUTIONS

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CONNECT WITH US

QUESTIONS?

